Aarons, Anthony. "Arbitration's Waterloo: Bowing to Plaintiffs on Mandatory Contracts." California Lawyer; October, 1997; 17(10): pp. 22-23.
Author discusses the recent policy shift of the American Arbitration Association towards refusing to accept cases arising out of mandatory arbitration contracts. The author contends that the new policy shows a greater willingness to work with plaintiff's attorneys. The author reports that the American Arbitration Association will no longer take cases that will deprive employees of their due process rights that they would otherwise have in court.
{146} ORGANIZATION POLICIES AND RULES

Aemmer, David. "Appellate Mediation in the Tenth Circuit." Colorado Lawyer; October, 1997; 26(10): pp. 25-28.
Author describes the Tenth Circuit's mediation process. The author also explains what the ADR process can offer practitioners in the Tenth Circuit. Finally, the author gives suggestions on how to use Appellate Mediation advantageously in the Tenth Circuit.
{21} MED: RELATED PROCESSES-GENERAL
{136} ECONOMIC ADVANTAGES OF ADR

Albren, Brett A. "The Continued Need for a Narrowly-Tailored, Rule-Based Dispute Resolution Mechanism in Future Free-Trade Agreements." Suffolk Transnational Law Review; Winter 1997; 20(1): pp. 85-107.
Author addresses the various dispute resolution mechanisms contained in NAFTA, noting that questions remain as to the proper handling of trade disputes through free trade agreement dispute resolution mechanisms. The author suggests that dispute resolution mechanisms in free-trade agreements should follow a rule-based settlement approach to ensure impartiality and efficiency in resolving major and minor trade disputes. In addition, dispute resolution mechanisms should be narrowly tailored in terms of their procedure and coverage. This, the author argues, will enable arbitral panels to follow distinct rules and regulations covering a host of trade issues that could potentially arise.
{92} SUBJ MATTER: INT'L

Alfini, James J. "Evaluative Versus Facilitative Mediation: A Discussion." Florida State University Law Review; Summer, 1997; 24(4): pp. 919-935.

Article is a transcript of a panel discussion about mediation. The panel was convened to evaluate the effect of the ten-year-old statute which gave every judge in Florida the power to send any case to mediation. Panel focuses on the debate between proponents of the facilitative model of mediation and proponents of the evaluative model of mediation.
{21} MED: RELATED PROCESSES-GENERAL

Alternative Dispute Resolution Board. "Rule 114 Code of Ethics." Hamline Journal of Public Law and Policy; Spring, 1997; 18(2): pp. 320-328.
Article discusses the Code of Ethics applied to persons approved as neutrals pursuant to Rule 114 in Minnesota. The article lists the three primary objectives of the Code: (1) give the parties background on how the procedure operates, (2) prevent discriminatory practices of neutrals, and (3) make neutrals aware of cultural differences that may impact on the process. The article lists helpful interpretive comments along with the Code to aid the practitioner.
{1} NEG: W/ OR W/O ASSIST OF 3D PARTY NEUTRAL-GENERAL
{138} ETHICS: GENERAL

Amadei, Robin N. and Lehrburger, Lillian S. "The Many Faces of Mediation." Colorado Lawyer; March, 1997; 26(3): pp. 47-51.
Article attempts to clarify the many forms and types of mediation. Author creates a "Mediation Process Spectrum," with "process-oriented" mediation at one end and "substance-oriented" mediation at the other end. Author provides case examples that analyze factors in disputes which indicate process or substance-orientation mediation.
{21} MED: RELATED PROCESSES-GENERAL

Arnold, Tom. "Twenty-one Common Mediation Errors, and How to Avoid Them." The Practical Litigator; July, 1997; 8(4): pp. 79-92.
The author gives twenty-one mistakes commonly made in the mediation process and methods to avoid them. The author warns not to treat mediation as an adversarial process. The end of the article has a checklist.
{21} MED: RELATED PROCESSES-GENERAL
{99} SUBJ MATTER: MEDICAL MALPRACTICE

Ayres, Ian and Barry J. Nalebuff. "Common Knowledge as a Barrier to Negotiation." UCLA Law Review; August, 1997; 44(6): pp. 1631-1659.
Article discusses the differences between first-order information and

higher-order information. Author uses this distinction to show how the acquisition of higher-order knowledge can cause negotiations to unravel. Author proposes that mediators can overcome this problem in negotiations by preventing the creation of "common knowledge." Article further presents how negotiations can be affected by beliefs about higher-order information, by presenting a series of examples concerning "value claiming" talk and "value creating" talk.
{21} MED: RELATED PROCESSES-GENERAL
{74} SUBJ MATTER: GENERAL

Bamforth, Richard. "Mediation: a Genuine Alternative or Just a Passing Trend?" Solicitors Journal; July 18, 1997; 141(28): pp. 688-689.
A British look at mediation as an alternative means to resolve commercial disputes quickly and cheaply. Article provides a summary of the typical mediation procedure and tries to dispel the myth that mediation is a sign of weakness. Author suggests that good mediation is a result of extensive preparation and the parties' desire to quickly resolve the dispute.
{21} MED: RELATED PROCESSES-GENERAL
{92} SUBJ MATTER: INT'L

Barrett, John Q. "A Post-Conference Reflection on Separate Ethical Aspirations for ADR's not - so - Separate Practitioners (Symposium: The Lawyer's Duties and Responsibilities in Dispute Resolution)." South Texas Law Review; May, 1997; 38(2): pp. 705-711.
Article questions the need to create separate ethical regulatory schemes for ADR. Author argues that ADR cannot define its ethics to the exclusion of ethics for traditional lawyers because those practicing ADR are not inseparable from those practicing traditional non-ADR work.
{138} ETHICS: GENERAL

Beresford Hartwell, Geoffrey M. "Arbitration: The Commercial Way to Justice?" Boston University International Law Journal; 1997; 15(1): pp. 179-183.
Short commentary by a British engineer on the fundamental nature of arbitration as social contract. Author emphasizes that arbitrators should focus on the merits of the case, ideally free from legal considerations, while recognizing that courts may enforce the promise to abide by an arbitral decision, and that courts may not enforce decisions that are contrary to public policy.
{96} SUBJ MATTER: INT'L

{102} SUBJ MATTER: PUBLIC POLICY

Billings, Peter W. "Judicial Review of Arbitration Awards is Limited." Utah Bar Journal; February 1997; 10(2): pp. 15-16.
Article describes how the decision of the Utah Supreme Court in the case of *Buzzas Baseball, Inc. v. Salt Lake Trappers, Inc.* limits judicial review of arbitration matters. In overturning the trial court's decision to vacate an award reached in an arbitration hearing, the Utah Supreme Court noted that judicial review of arbitration awards might destroy the crucial privacy aspect of the arbitration procedure. The author notes that the decision in the case will affect the limits of future judicial review of arbitration awards.
{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

Binning, John H. and Timothy L. Moll Moll. "Arbitration of Reinsurance Disputes in Liquidation of Insurance Companies." Tort & Insurance Law Journal; Summer, 1997; 32(4): pp. 937-960.
Article examines the relationship between the Federal Arbitration Act (FAA) and the McCarran-Ferguson Act in the context of arbitrating disputes in insurance company liquidation proceedings. Authors contend the enforceability of arbitration clauses depends on the state statute at issue. Authors discuss case law that provides some guidance but note that until a consensus is reached, the enforceability of arbitration clauses in this area is uncertain.
{91} SUBJ MATTER: INSURANCE

Black-Branch, Jonathan L. and Wendy. Lamont. "Entrenching Contractual Clauses for Safety in the Educational Workplace into the Collective Agreement: The New Frontier in Employment Law." Journal of Collective Negotiations in the Public Sector; Spring, 1997; 26(2): pp. 125-135.
Article addresses the concerns of public sector teachers regarding personal safety and security in the educational workplace. Author finds that rural, suburban, and inner-city teachers increasingly feel they are being denied a duty of care and thus want safety protections enshrined in the collective agreements and contracts. Author concludes that contractual guarantees developed during the negotiating process and outlined in the collective bargaining agreement may increase safety and security in the educational workplace.

{1} NEG: W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL-GENERAL
{93} SUBJ MATTER: LABOR-GENERAL

Blackford, Jason C. "An Introduction to International Arbitration." The Practical Lawyer; June, 1997; 43(4): pp. 79-91.
The article discusses the fact that due to the growth of international trade, businesses operating under different legal systems have begun to use ADR mechanisms to settle their differences. The article addresses the pitfalls of arbitration in international business, including the fact that enforcement can be a problem. The article also includes a guide to international business arbitration and sample clauses.
{92} SUBJ MATTER: INT'L

Blackwell, Gerry. "A Jurisdiction Called Cyberspace." Canadian Lawyer; March, 1997; 21(3): pp. 21-24.
Article offers a concise discussion of the Virtual Magistrate, a project advanced by some as a possible solution to the jurisdictional problems created by cyberspace. While proponents note the benefits of the project, which would offer arbitration, mediation and consultation services to those involved in a cyberspace dispute, most agree that its adoption is unlikely due to the radical departure it presents for traditional, local systems of justice.
{105} SUBJ MATTER: SCEINCE, COMPUTERS & TECHNOLOGY

Bompey, Stuart H., Michael Delikat, et al. "The Attack on Arbitration and Mediation of Employment Disputes." The Labor Lawyer; Summer, 1997; 13(1): pp. 21-86.
Article discusses whether employers should use ADR for employment disputes. Article provides an extensive discussion of the procedural considerations, logistics, pros and cons for employers, and enforceability of various ADR methods. The author contends that employers would be well-served to consider ADR.
{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

Bond, Carrie. "Shattering the Myth: Mediating Sexual Harassment Disputes in the Workplace." Fordham Law Review; May 1997; 65(6): pp. 2489-2533.
Author discusses the need for mediation for resolving employment-related sexual harassment disputes. She discusses the serious problem of sexual harassment in the workplace, explains the central roles that arbitration and

litigation play in resolving these sexual harassment claim, and contends that arbitration and litigation are ill-suited for settling sexual harassment disputes. Article then explains mediation, details why it is more appropriate for resolving sexual harassment cases, and provides a sample mediation provision for employment contracts. Author emphasizes that mediation should be the central process by which employment-related sexual harassment disputes are resolved.
{21} MED: RELATED PROCESSES-GENERAL
{110} SUBJ MATTER: OTHER TORTS
{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

Bridge, Caroline. "Family Mediation and the Legal Process: An Unresolved Dilemma." New Zealand Universities Law Review; June 1997; 17(3): pp. 231-253.
This article questions the positive support for mediation in family disputes in the UK, Australia and New Zealand. The author cites recent data that indicates the weaknesses in family mediation and contends that mediation should not be viewed as a substitute for counseling. Author believes that when mediation is the product of choice, mediation has the opportunity to live up to its ideal. However, when mediation is integrated into the legal system as a substitute for legal advice, it interferes with accepted concepts of justice.
{85} SUBJ MATTER: FAMILY (DOMESTIC REL)
{21} MED: RELATED PROCESSES-GENERAL
{92} SUBJ MATTER: INT'L

Briner, Robert. "Arbitration: Interim Awards." International Business Lawyer; April 1997; 25(4): pp. 153-156, 160.
Author discusses the general problem of arbitrants seeking to win arbitration and advance their own cause rather than seeking a fair resolution of disputes without unnecessary delay or expense. Author discusses a typical International Chamber of Commerce (ICC) arbitration and the costs incurred therein. Article next examines issues surrounding a claimant's request for an interim award equaling defendant's share of arbitration costs and exposes the problem of defendants not paying its share of arbitration costs.
{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL
{92} SUBJ MATTER: INT'L

Brown, Jennifer Gerarda. "The Role of Hope in Negotiation." UCLA Law Review; August, 1997; 44(6): pp. 1661-1686.
This article is chiefly concerned with economic perspectives on negotiations and how defensible theories of hope should challenge economists and other theorists to restructure their models of negotiation. Author gives a summary and critique of the work of some negotiation theorists and strategists who discuss hope as an independent variable in negotiations. These views include hopelessness, satiation and optimism. In sum, the author states that we can not manipulate hope, but we should include it in our models of negotiation so as to help negotiators prepare more thoroughly.
{1} NEG: W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL-GENERAL

Bullock, Stephen G. and Linda Rose Gallagher. "Surviving the State of the Mediative Art: A Guide to Institutionalizing Mediation in Louisiana." Louisiana Law Review; Spring, 1997; 57(3): pp. 885-984.
Article provides an in-depth overview of mediation for practitioners, scholars and legislators unfamiliar with the processes. Authors argue that Louisiana should institute a state-wide mediation program to promote its use. Toward this end, the authors analyze ten issues they believe most important to drafting a successful program, including privileged communications, qualifications and training of mediators, rules of conduct and ethical standards, mediator liability, placement of mediation in litigation process, party protections and mandating use.
{21} MED: RELATED PROCESSES-GENERAL

Bush, Robert A. Baruch. "What Do We Need a Mediator for? Mediation's "Value-added" for Negotiators." Ohio State Journal on Dispute Resolution; Fall; 12(1): pp. 1-36.
This article asks and answers the question: What is the "value-added" of mediation for those trying to negotiate resolutions to conflicts? The question is one that mediators and proponents of mediation must be able to answer because it is one that parties to conflict and their lawyers frequently and justifiably raise. Bush argues that we ourselves, as business people, are experienced negotiators; beyond that, we're all employing lawyers here who are expert negotiators, and so, with all this expertise, we can negotiate by ourselves. The author explains the value-added in the mediation process compared to the negotiation process we can conduct for ourselves; and why should anyone pay for it, as well as spend the time to participate. Why should we consider this process a valuable product that we should pay extra

for when we can accomplish the same thing ourselves.
{1} NEG: W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL-GENERAL
{21} MED: RELATED PROCESSES-GENERAL
{136} ECONOMIC ADVANTAGES OF ADR

Carrington, Paul D. and Derrick P. Apanovitch. "The Constitutional Limits of Judicial Rulemaking: The Illegitimacy of Mass-tort Settlements Negotiated Under Federal Rule." Arizona Law Review; Summer, 1997; 39(2): pp. 461-495.
Author contends that the federal judiciary cannot confer upon itself the power to sanction settlements of mass tort claims not suited for consolidated trial, and explains why that is so.
{110} SUBJ MATTER: OTHER TORTS

Carter, Patricia I. "Binding Arbitration in Malpractice Disputes: The Right Prescription for HMO Patients?" Hamline Journal of Public Law and Policy; Spring, 1997; 18(2): pp. 423-451.
Article explores the use of binding arbitration as a means of resolving disputes between patients and HMOs. Author suggests that the unequal bargaining power between injured patients and large HMOs may skew the arbitration process. Author recommends strategies that may help facilitate a more equitable use of arbitration in these disputes.
{98} SUBJ MATTER: MEDICAL MALPRACTICE
{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

Cassidy, Robert. "Dispute Resolution Under NAFTA: A U.S. Perspective." Canada-United States Law Journal; Annual,1997; 23: pp. 147-150.
Article provides select proceedings of the Canada-United States Law Institute Conference which was held in Cleveland from April 18-20, 1997. Author contends that effective dispute resolution is essential for a rule-based system such as NAFTA. Article seeks to analyze the American perspective of the effectiveness of dispute resolution under NAFTA. Author contends that although the system has been effective in its early stages, it has a variety of problems that prevent it from reaching ultimate success.
{92} SUBJ MATTER: INT'L

Chanen, Jill Schachner. "Talking it Through." A.B.A. Journal; February, 1997; 83(2): pp. 64-66.

Author suggests that intra-firm disputes should be resolved by using the same ADR programs that the firm recommends to its clients. Mediation clauses in partnership contracts and training courses for members of the firm can help prevent the destruction of a law firm. The author uses anecdotal interviews with members from large and small law firms to point to the destructive nature of intra-firm conflicts.
{21} MED: RELATED PROCESSES-GENERAL
{151} ROLE OF LAWYERS

Coakley, Michael P. and Mary A. Bedikian. "De-mystifying Securities ADR: Reform and Resurgence after McMahon." Michigan Bar Journal; February, 1997; 76(2): pp. 176-182.
This Article discusses the changes that inhere in the federal law of arbitration as well as recent developments, specifically the Ruder Report, a critical assessment of how arbitration works and should work to raise investor confidence in the viability of the arbitral forum. The Authors then present a short discussion of the growth of other ADR methods, attributable in part to a wider use of arbitration. Finally, the authors look at the future of securities ADR.
{106} SUBJ MATTER: SECURITIES

Cole, Sarah Rudolph. "A Funny Thing Happened on the Way to the (Alternative) Forum: Reexamining *Alexander v. Gardner-Denver* in the Wake of *Gilmer v. Interstate/Johnson Lane Corp.*" Brigham Young University Law Review; Summer, 1997; 1997(3): pp. 591-629.
Article examines the effect of *Gilmer v. Interstate/Johnson Lane Corp.* on predispute arbitration agreements between unions and employers. Author contends that the bases of *Alexander v. Gardner-Denver Corp.* are no longer sound. Using game theory, author argues that if individual employees can agree to arbitrate statutory employment rights, so can union employees.
{93} SUBJ MATTER: LABOR-GENERAL

Connor, Laurence D. "The Role of the Advocate in Mediation." Michigan Bar Journal; February, 1997; 76(2): pp. 160-162.
Article provides recommendations on how best to represent a client in mediation. The author advises that counsel carefully examine potential mediators, keep abreast of all issues involved in the dispute, explain the process of mediation to the client and make sure that the deal is closed and reduced to writing when mediation is finished. The author envisions the

advocate as a counselor to the client and stresses preparation and knowledge of the mediation process.
{21} MED: RELATED PROCESSES-GENERAL
{151} ROLE OF LAWYERS

Cook, John E. "A Twenty-year Comparison Regarding Campus Attitudes Toward Collective Bargaining." Journal of Collective Negotiations in the Public Sector; Spring, 1997; 26(2): pp. 137-150.
Article examines two studies, one conducted in the 1970s and the other in the 1990s, regarding the personnel policies for nonacademic employees at institutions of higher education. Author discusses the themes in the studies of the status of personnel policies and the attitudes and climate regarding collective bargaining. Author explains that there was little change from the 1970s to the 1990s in how the personnel procedures for nonacademic employees is perceived. Author concludes that participative management appears to be the key aspect in driving perceptions about human resource campus practices.
{95} SUBJ MATTER: LABOR-MANAGEMENT (UNIONS)
{124} COMPARISONS: CROSS-CULTURAL

Cooley, John W. "15 Reasons for Using Mediation Besides Settlement." Res Gestae; January, 1997; 40(7): pp. 26-29.
Article encourages mediation as a solution even when mediation cannot settle the entire dispute. The author lists fifteen situations in which mediation is beneficial, including: resolving part of the case, narrowing issues, testing a claim or defense, evaluating the case, evaluating potential witnesses and speeding up the discovery process.
{21} MED: RELATED PROCESSES-GENERAL

Craver, Charles B. "Negotiation Ethics: How to be Deceptive Without Being Dishonest/How to be Assertive Without Being Offensive." (Symposium: The Lawyer's Duties and Responsibilities in Dispute Resolution." South Texas Law Review; May, 1997; 38(2): pp. 713-734.
Article provides a brief discussion of a lawyer's ethical responsibilities in negotiations. Author argues that in order to best serve both the client and society while at the same time remaining ethical, attorneys should "diligently strive to advance client objectives while simultaneously maintaining their personal integrity."
{1} NEG:W/ OR W/O ASSIST OF 3D PARTY NEUTRAL-GENERAL
{138} ETHICS: GENERAL

Dampf, Robert S. "Tips From the Mediator: Of Sticks and Stones." Louisiana Bar Journal; August, 1997; 45(2): pp. 138-143.
Author, an experienced mediator, offers some thoughts on mediation about selection of a mediator, compromise, good faith, advocacy, egos and yappy lawyers. Author advises that a successful mediation produces a signed document, while he also pleads for lawyers and mediators to try to be problem solvers.
{21} MED: RELATED PROCESSES-GENERAL

Davidson, Fraser. "The New Arbitration Act -- A Model Law?" The Journal of Business Law; March, 1997: pp. 101-129.
Article examines the similarities between the English Arbitration Act 1996 and the UNCITRAL Model Law on International Commercial Arbitration. Author concludes that the Act broadly follows the Model Law, and by relying on pre-existing English law, it also creates certainty in areas which are inevitably vague in the Model Law.
{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL
{92} SUBJ MATTER: INT'L

Davidson, Mary. "A Judicial Commentary: Rule 14 is Expanded to Include Family Law. Or is it?" Hamline Journal of Public Law and Policy; Spring, 1997; 18(2): pp. 413-422.
Article discusses the extent to which the recent amendments to Minnesota General Rule of Practice (Rule 114) extend the application of ADR to family law matters. Author suggests that ADR is a successful alternative to litigation for family law matters. Author posits that Rule 14 should be improved by adding an education requirement for judges, lawyers and parties by requiring the lawyers to verify that they have provided information to the clients about ADR options.
{85} SUBJ MATTER: FAMILY (DOMESTIC REL)
{149} QUALITY CONTROL

Davis, Kenneth R. " When Ignorance of the Law Is No Excuse: Judicial Review of Arbitration Awards." Buffalo Law Review; Winter, 1997; 45(1): pp. 49-139.
Article discusses two important issues in arbitration law: arbitrability and judicial review. Arbitrability addresses the tension between the Federal Arbitration Act, which encourages enforcement of arbitration agreements, and public policy, which disfavors private arbitration of federal claims that

implicate societal interests. Author contends that the tension within arbitrability can be resolved by judicial review if judicial review is based on a contract analysis of the arbitration agreement.
{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL
{102} SUBJ MATTER: PUBLIC POLICY

Davitz, Christine L. "U.S. Supreme Court Subordinates Enforcement of Regulatory Statutes to Enforcement of Arbitration Agreements: From the Bremen's License to the Sky Reefer's Edict." Vanderbilt Journal of Transnational Law; January, 1997; 30(1): pp. 59-96.
Note analyzes the Court's reasons for developing a strong pro-arbitration stance regarding disputes arising out of international commercial contracts. Author compares the Court's reasons for its position with the history and purposes of the Federal Arbitration Act and the New York Convention, which the author concludes are at odds. The note discusses the dangers posed to U.S. public policies that are created when statutory claims are arbitrated. The author concludes that the Court's expansion of the scope of arbitable issues beyond what was intended by the FAA and the New York Convention jeopardizes U.S. regulatory schemes.
{76} SUBJ MATTER: COMMERCIAL
{92} SUBJ MATTER: INT'L
{146} ORGANIZATION POLICIES AND RULES

Delikat, Michael. "Binding Arbitration of Employment Claims: The Shifting Landscape." Employee Relations Law Journal; Spring, 1997; 22(4): pp. 25-47.
Article presents a survey of the most recent changes in the arbitration of employment disputes. The main topics include: enforceability of pre-dispute arbitration clauses, EEOC's and NLRB's opposition to these clauses, arbitrators' authority to award punitive damages and attorney fees and an overview of recent arbitration agreement legislation. Author observes that employment arbitration law is frequently challenged, yet continues to evolve.
{93} SUBJ MATTER: LABOR-GENERAL

Devinatz, Victor G. "Testing the Johnston 'Public Sector Union Strike Success' Hypothesis: a Quantitative Analysis." Journal of Collective Negotiations in the Public Sector; Spring, 1997; 26(2): pp. 99-112.
Article tests the hypothesis that the success of any collective action held by public sector unions is dependent on the ability of the union to frame its

demands in terms of the public interest and the ability of the union to form coalitions during the collective action. Author examines case studies of public sector union strikes throughout the U.S. Author concludes that strike success is dependent on the union being able to form successful strike coalitions but not on the ability of the union to frame its demands in terms of the public interest.
{93} SUBJ MATTER: LABOR-GENERAL

Diamond, Thomas A. "Choice of Law Clauses and Their Preemptive Effect upon the Federal Arbitration Act; Reconciling the Supreme Court with Itself." Arizona Law Review; Spring, 1997; 39(1): pp. 35-64.
Author discusses the validity of choice of law clauses in arbitration agreements in light of two Supreme Court decisions; *Volt Information Sciences v. Board of Trustees and Mastrobuono v. Shearson Lehman Hutton, Inc.* The two cases are in disagreement over the issue of the effect that chosen state law will have on the Federal Arbitration Act. The author notes that unless the two cases are reconciled, the discord between federal courts may undermine the purpose of the FAA.
{74} SUBJ MATTER: GENERAL
{128} REQUIREMENTS: CONTRACTUAL CLAUSES

Dibble, Richard E. "Alternative Dispute Resolution of Employment Conflicts: The Search for Standards." Journal of Collective Negotiations in the Public Sector; Winter 1997; 26(1): pp. 73-84.
Article examines alternative dispute mechanisms of public and private employers implemented to reduce time consumption and expenses associated with court or regulatory resolution of employee complaints. Article discusses whether ADR mechanisms, such as ombudspersons, complaint procedures, mediation and arbitration, fairly and thoroughly resolve employee disputes, especially where statutory rights are at issue. Article examines the trend toward wider use of ADR for settling employment conflicts and recent proposals for quality standards for such procedures. Article suggests that employer should provide multiple ADR options tailored to meet the needs of diverse types of employees and conflicts. Article concludes that minimally acceptable standards and safeguards are likely to change over the years as courts confront the issue of fairness and legislatures step in to define what is acceptable.
{38} NON-BINDING RECOMMENDATION PROC-GENERAL
{93} SUBJ MATTER: LABOR-GENERAL
{145} OMBUDSPERSON

Donahey, M. Scott. "International Commercial Dispute Resolution." International Lawyer; Summer, 1997; 31(2): pp. 261-265.
The author summarizes several significant developments that occurred in 1996 relative to international dispute resolution. The author discusses the developments in the following areas: (1) international organizations and arbitration centers; (2) national legislation dealing with international arbitration; and (3) national court decisions dealing with international arbitration.
{92} SUBJ MATTER: INT'L

Dunham, Edward Wood. "The Arbitration Clause as a Class Action Shield." Franchise Law Journal; Spring, 1997; 16(4): pp. 141-142.
This article asserts that the Federal Arbitration Act allows the franchisor to reduce dramatically their exposure to class action suits. This is because the FAA does not allow consolidation or class action arbitration without the express consent of the parties. This allows the franchisor with an arbitration clause to require each franchisee with a claim to pursue said claim individually. Further, the author believes that most franchisees will not be aware of their claim but, should they become aware, arbitrators rarely issue runaway awards.
{74} SUBJ MATTER: GENERAL

Ellman, Stephen J. "Problems in Patent Litigation: Mandatory Mediation May Provide Settlements and Solutions." The Ohio State Journal on Dispute Resolution; Spring, 1997; 12(3): pp. 759-778.
Article discusses the impact of scientific advances on patent litigation and the need for resolving patent disputes efficiently. Author contends that the current system of patent litigation is inefficient and that a system of mandatory alternative dispute resolution for patent disputes is desirable.
{105} SUBJ MATTER: SCEINCE, COMPUTERS & TECHNOLOGY

Feerick, John D. "Toward Uniform Standards of Conduct for Mediators." South Texas Law Review; May 1997; 38(2): pp.455-484.
Author discusses ABA-AAA Model Standards of Conduct for Mediators and provides an overview of those standards. The standards discussed in the article include: self-determination, impartiality, conflicts of interest, competence, confidentiality, quality of the process, advertisements and solicitation, fees and obligations to the mediation process. In addition, article offers a general discussion of the subject areas and references to

various ethical codes and cases on point.
{138} ETHICS: GENERAL

Figman, Cory S. "Securities Arbitration Agreements." Seton Hall Legislative Journal; July, 1997; 21(1): pp. 69-91.
The article addresses the issue of security arbitration agreements by beginning with a broad overview of arbitration and in particular, securities arbitration. The article also discusses arbitration legislation and case law, looking specifically at securities arbitration case law. The article also considers issues such as suitability, misrepresentation of fraud, churning and unauthorized trading. The article concludes by discussing the enforcement and challenge of security arbitration decisions.
{106} SUBJ MATTER: SECURITIES

Finkin, Matthew W. "Employment Contracts under the FAA - Reconsidered." Labor Law Journal; June, 1997; 48(6): pp. 329-335.
According to the article, there is no official documentation of the reason behind the exclusion of employment contracts for workers involved in foreign or interstate commerce, especially seamen and railroad employees, from the FAA. However, the excluded cases were all under the jurisdiction of Congress at the time so this is probably the reason for the exclusion and why other worker groups did not protest the exclusion. Courts have since expanded the coverage of the FAA and the exclusion but Congress should be the one to modernize public policy, not the courts.
{93} SUBJ MATTER: LABOR-GENERAL

Fishburne, Benjamin P. III and Chuncheng Lian. "Commercial Arbitration in Hong Kong and China: A Comparative Analysis." University of Pennsylvania Journal of International Law; Spring, 1997; 18(1): pp. 297-332.
The author notes the impact that the reversion of Hong Kong as a colony of the United Kingdom to a Special Administrative Region of the People's Republic of China will have on commercial arbitration in Hong Kong. The article compares the arbitration systems of Hong Kong with those of China, placing particular emphasis on issues such as jurisdiction, classification of the dispute as international or domestic and choice of arbitrators. Because the two systems are subject to the same influences and appear to be moving in the same direction, the author sees little difficulty in reconciling the two systems after reversion.
{92} SUBJ MATTER: INT'L

Forchheimer, Jody E. "Arbitrating Discrimination Cases." The Practical Litigator; July, 1997; 8(4): pp. 33-40.
Author discusses the differences between arbitration, mediation and court-cases, from her personal experience in trying discrimination cases and cases in general. Emphasis is on the lack of discovery in arbitration and the lawyer's increased responsibilities to investigate facts and modify case tactics.
{21} MED: RELATED PROCESSES-GENERAL
{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL
{94} SUBJ MATTER: LABOR-DISCRIMINATION

Fowler, William G. II. "Arbitration: Kentucky Court Should Not Liberally Vacate Awards." The Kentucky Law Journal; Spring, 1997; 85(3): pp. 697-721.
Author discusses the Kentucky Supreme Court decision in *Carrs Fork Corp. v. Kodak Mining Co.*, 809 S.W.2d 699 (Ky. 1991). Author points out that the standard of review of arbitration awards in Kentucky is less deferential than other modern decisions and discusses the history of Kentucky Supreme Court decisions concerning deference to arbitration awards. Author concludes that *Carrs Fork* is contrary to policy considerations favoring arbitration and arbitration awards.
{133} COURT REFORM

Franks, J. Michael and John W. Heacock. "Arbitration and the Contract Surety: Inclusion and Preclusion." Tort & Insurance Law Journal; Summer, 1997; 32(4): pp. 977-1001.
Article examines the options available to sureties notified of pending arbitration. Authors discuss the effect of res judicata and collateral estoppel and focuses on the construction industry. Authors warn of the shortcomings of arbitration when parties have not freely chosen the process. Authors encourage use of arbitration to settle factual suits and the use of courts to apply the law.
{80} SUBJ MATTER: CONSTRUCTION

Freese Jr., L., Richard Sagnola, et al. "New Challenges in International Commercial Disputes." Colorado Lawyer; September, 1997; 26(9): pp. 61-63.
This article explores NAFTA directives regarding the creation of dispute resolution facilities, the use of arbitration or mediation in general, and the

enforcement of arbitration awards in commercial disputes in Canada, the United States, and Mexico. The requirements of Article 2022 of NAFTA, entitled "Alternative Dispute Resolution of Commercial Disputes," are outlined and discussed. The author proposes that efforts to establish more ADR facilities in the three countries will provide a more effective and widely-used NAFTA arbitration/mediation organization.
{92} SUBJ MATTER: INT'L

Freshman, Clark. "Privatizing Same-sex 'Marriage' Through Alternative Dispute Resolution: Community-Enhancing Versus Community-Enabling Mediation." UCLA Law Review; August, 1997; 44(6): pp. 1687-1771.
Author proposes a model of mediation called "community-enabling mediation" which is intended to ascertain peoples' preferences and values, when they are given different values and options and encouraged to consider those views. As an example, the author focuses on how mediation could help a lesbian Jewish couple to structure their living arrangement, in lieu of the non-availability of a marriage license. The author also tackles the question of same-sex marriage in our postmodern era and emphasizes the notion of "private ordering", which involves local knowledge to the subject and keeps the process private.
{21} MED: RELATED PROCESSES-GENERAL
{78} SUBJ MATTER: COMMUNITY
{85} SUBJ MATTER: FAMILY (DOMESTIC REL)

Fried, Gil and Michael Hiller. "ADR in Youth and Intercollegiate Athletics." Brigham Young University Law Review; Summer, 1997; 1997(3): pp. 632-652.
Article discusses mediation, arbitration and med-arb in the context of youth and intercollegiate athletics. Author argues in favor of a comprehensive contractual scheme for providing ADR as a primary source of dispute resolution. Author suggests that such a scheme, properly implemented, can help to maintain good working relationships between disputants.
{74} SUBJ MATTER: GENERAL

Friedman, George H. "Alternative Dispute Resolution and Emerging Online Technologies: Challenges and Opportunities." Hastings Communications and Entertainment Law Journal; Spring, 1997; 19(3): pp. 695-718.
The author explores the actual and potential use of alternative dispute

resolution mechanisms in disputes arising out of online transactions and the application of online technology to alternative dispute resolution. The author discusses the perceived benefits and probable challenges associated with these notions.
{105} SUBJ MATTER: SCEINCE, COMPUTERS & TECHNOLOGY

Fulsang, Eric James. "The arbitrability of domestic antitrust disputes: where does the law stand?" DePaul Law Review; Spring, 1997; 46(3): pp. 779-822.
This article asserts that arbitrating domestic antitrust claims would clearly result in quicker and cheaper resolutions to these disputes. In order to alleviate public policy concerns, however, claims heard should be limited to (1) disputes arising from the scope of the contract between the parties or (2) parties who expressly desire such arbitration.
{75} SUBJ MATTER: ANTITRUST

Gangel-Jacobs, Phyllis. "Without Lawyers, Mediation Sacrifices Justice." Trial; August, 1997; 33(8): pp. 44-50. .
Author, a New York County Supreme Court justice who has developed an ADR process for matrimonial cases called neutral evaluation, contends that mediation can do a disservice to families by favoring peaceful agreement over the parties' legal rights or obligations. Author also asks that people not be misled by the notion that mediation is less costly and more "civilized". Her ADR process attempts to avoid the down-falls of lawyerless mediation.
{85} SUBJ MATTER: FAMILY (DOMESTIC REL)

Garcia, Frank J. "Decionmaking and Dispute Resolution in the Free Trade Area of the Americas: An Essay in Trade Governance." Michigan Journal of International Law; Winter, 1997; 18(2): pp. 357-397.
Author states that one of the most challenging issues in implementing the Free Trade Area of the Americas (FTAA), as well as future agreements, will be the development of institutions capable of making decisions and resolving disputes. Article proposes an outline for the structure of such institutions, applying the author's analysis of the mesoinstitutions theory to propose a framework in the FTAA.
{92} SUBJ MATTER: INT'L

Garwin, Arthur. "Show Me the Offer: When Opposing Counsel Suggests Mediation, Your Client Needs to Know." ABA Journal; June 1997; 83(6):

pp. 84.
This short article explores the question of whether an attorney is obligated to tell her client about opposing counsel's offer to mediate. Author looks to different state bar association ethics opinions and cases to conclude which attorneys should inform their clients about offers to mediate.
{139} ETHICS: MISREPRESENTATION, FAILURE TO DISCLOSE

Gary, Susan N. "Mediation and the Elderly: Using Mediation to Resolve Probate Disputes Over Guardianship and Inheritance." Wake Forest Law Review; Spring, 1997; 32(2): pp. 397-444.
Article extols the virtues of mediation in the context of disputes involving family issues. Moreover, the author specifically examines the role mediation can play in guardianship and inheritance matters. Author concludes by establishing a framework for integrating mediation into probate law.
{85} SUBJ MATTER: FAMILY (DOMESTIC REL)
{136} ECONOMIC ADVANTAGES OF ADR

Gellman, Robert. "A Brief History of the Virtual Magistrate Project: the Early months." Louisiana Bar Journal; February, 1997; 44(5): pp. 430-434.
This article deals with how problems with tortious messages on the Internet are effectively dealt with through the "Virtual Magistrate" program. The author gives a brief history of the program detailing the goals of the project as well as certain key features.
{105} SUBJ MATTER: SCEINCE, COMPUTERS & TECHNOLOGY
{110} SUBJ MATTER: OTHER TORTS

Giovannucci, Marilou T. "Understanding the Role of the Mediator in Child Protection Proceedings." Family and Conciliation Courts Review; April, 1997; 35(2): pp. 143-148.
Article discusses the unique role of the mediator in child protection proceedings. Author observes that child protection mediators have the additional responsibility for guarding against further emotional trauma to the child and as well as for providing for his or her well-being. Toward this end, the author suggests that child protection mediators possess the following qualifications: an understanding of the child welfare system and applicable laws; education and experience in the area of child development; and a working knowledge of issues related to child protection, such as mental health, substance abuse, special education, sex abuse, adoption and

foster care.
{85} SUBJ MATTER: FAMILY (DOMESTIC REL)

Golberg, Steven H. "'Wait a Minute. This is Where I Came In.' A Trial Lawyer's search for Alternative Dispute Resolution." Brigham Young University Law Review; Summer, 1997; 1997(3): pp. 653-685.
Author draws upon his experience as a trial lawyer, law professor, and law school dean to express his thoughts and some misgivings about the state of ADR. Author argues that ADR is no longer an alternative to the adversary system but simply another form of adversarial dispute resolution.
{74} SUBJ MATTER: GENERAL

Goren, William D. "Health Care and Preventive Law: Utilization of the Three Prong Paradigm." Preventive Law Reporter; Winter, 1997; 15(4): pp. 39-40.
Author proposes the applicability of his preventive lawyering paradigm to drafting health care contracts, which includes: prevention, minimization and cutting loses. Author opines that most lawyers doing contract work anticipate future problems, but often do not take preventive lawyering far enough. Further, author suggests interviewing one's client before drafting a contract and advocates the avoidance of legalese.
{89} SUBJ MATTER: HOSPITALS

Gotanda, John Y. "Awarding Punitive Damages in International Commercial Arbitrations in the Wake of *Mastrobuono v. Shearson Lehman Hutton, Inc.*" Harvard International Law Journal; Winter, 1997; 38(1): pp. 59-112.
This article discusses the effect of the Supreme Court decision, *Mastrobuono v. Shearson Lehman Hutton.* It explains that the trend of arbitration as the preferred method for resolving disputes is likely to continue as a result of this decision in which the Court held that an arbitrator has the authority to award punitive damages where an arbitration clause either explicitly or implicitly gives an arbitrator that authority, or if the clause is otherwise ambiguous on the issue. Author points out the problems in applying the decision to establish a presumption in favor of awarding punitive damages in international commercial arbitrations. Author concludes that *Mastrobuono* should not be applied to international commercial arbitrations in the same manner as domestic arbitrations.
{76} SUBJ MATTER: COMMERCIAL
{92} SUBJ MATTER: INT'L

{133} COURT REFORM

Green, Eric D. "What Will We Do When Adjudication Ends? We'll Settle in Bunches: Bringing Rule 23 Into the Twenty-First Century." UCLA Law Review; August, 1997; 44(6): pp. 1773-1801.
Author gives an academic review of the lack of ADR use in class-action suits due to the majority views on the predominance and adequacy of representation tests applied to Rule 23, and opposition from the corporate, insurance and financial sectors. Author concludes that settlements in class-action suits should be encouraged, and that the proposed amendment to Rule 23(b), 23(b)(4), which would allow permit certification for purposes of settlement classes, is a step in the right direction for modern mass litigation.
{123} SETTLEMENT: PRESSURES TO SETTLE

Gregoire, Christine. "Process and Progress: An Insider's Perspective on Tobacco Settlement Negotiations." Washington State Bar News; September, 1997; 51: pp. 17-24.
The author, who is the Attorney General of the State of Washington, discusses her perspective and personal experiences concerning recent tobacco settlement negotiations. She conveys how she became persuaded to enter the chain of suits filed against the tobacco industry and how Washington teamed with other states, private attorneys and public policy advisors to achieve a settlement that she believes exceeds what the State alone could have achieved on its own. She explains, however, that Congress and some members of the public will raise concerns over specific issues of the settlement, including private claims for punitive damages and attorney fees.
{110} SUBJ MATTER: OTHER TORTS
{121} SETTLEMENT: AUTHORITY

Grezlak, Hank. "Work on Related Case Gets Attorney Disqualified as Arbitrator." Pennsylvania Law Weekly; January 20, 1997; 20: pp. 10.
Article highlights judge's decision to throw out an arbitrator in an insurance matter because the arbitrator had represented another insurance company in a matter arising from the same accident. Because the arbitrator, Mr. Nealon, had knowledge regarding the matters to be decided, the judge felt that Mr. Nealon could not be impartial and nonpartisan. The judge decided that it would make no sense to participate in arbitration with someone who could cause the outcome to be thrown out.

{114} 3D PARTY: PRACTICE OF LAW
{138} ETHICS: GENERAL

Guill, Terenia Urban. "A Framework for Understanding and Using ADR." Tulane Law Review; March, 1997; 71(4): pp. 1313-1338.
Article addresses the benefits and limitations of ADR and the lawyer's role in its utilization. Author contends that ADR will only be successful if lawyers are willing to take an active role in screening potential cases, selecting appropriate processes and advising parties throughout the proceedings. Author concludes by offering a framework for lawyers seeking to effectively use ADR despite its limitations.
{74} SUBJ MATTER: GENERAL
{136} ECONOMIC ADVANTAGES OF ADR

Haber, Lawrence J., et. al. "A Survey of Published, Private-sector Arbitral Decisions." Labor Law Journal; July, 1997; 48(7): pp. 431-436.
Survey indicates that private-sector arbitration tends to favor unions when the burden of proof is on management and a higher standard of evidence is required. Management is more successful in cases involving issues that are not detailed in either labor law or the labor contracts. Therefore, management decisions appear to be limited by explicit laws and contracts. Most cases are related to job-security issues, either discharge cases or when the operations of businesses have changed. There were 1,128 arbitration awards included in the survey.
{95} SUBJ MATTER: LABOR-MANAGEMENT (UNIONS)

Hansen, Mark. "Contract Disputes: EEOC Reaffirms Policy Favoring Judges Over Arbitrators for Workplace Discrimination Claims." ABA Journal; September, 1997; 83(9): pp. 26.
Article discusses EEOC's reaffirmed opposition to mandatory binding arbitration agreements as a condition of employment in light of an agency policy statement issued July 10, 1997. Author reports that while the EEOC has taken at least 28 such agreements to court since 1988, the courts, overwhelmingly, have not sided with the EEOC. Article further explains the arguments made by proponents and opponents on both sides of the issue.
{127} REQUIREMENTS: MANDATE TO USE
{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

Harges, Bobby Marzine. "Mediator Qualifications: The Trend Toward Professionalization." Brigham Young University Law Review; Summer, 1997; 1997(3): pp. 687-714.
Article discusses the trend toward professionalization of mediation, especially with regard to disputes involving child custody and visitation issues. Article addresses how mediation is used in such disputes, the trend among states to make mediation of such disputes mandatory and the corresponding trend toward requiring specialized training and/or academic degrees, or other certifications. Article also examines each state that has imposed such requirements, the need for mediators with academic degrees and/or specialized training and certificates. Author contends that the trend toward professionalization is positive and should continue.
{85} SUBJ MATTER: FAMILY (DOMESTIC REL)
{149} QUALITY CONTROL

Harper, Barbara and Randy Beitel. "Fee Arbitration to be Mandatory When Requested by a Client." Washington State Bar News; August, 1997; 51: pp. 37-39.
Article discusses the mechanics of the proposed Washington State Bar Association Fee Arbitration Program, which is based on the ABA Model Rules for Fee Arbitration. Generally, the proposal provides that fee arbitration will continue to be voluntary for clients, but lawyers will be required to submit to such arbitration if a client requests. However, the proposal encourages more informal resolution of fee disputes by holding fee arbitration proceedings in abeyance if the lawyer and client agree to mediation.
{127} REQUIREMENTS: MANDATES TO USE
{128} REQUIREMENTS: STATUTORY OR RULES

Harrington, Michael E. "A Review and Evaluation of the Hong Kong Airport Core Programme Mediation Rules: Specifically Rules 15 and 16 in the Context of Impasse." Boston University International Law Journal; Spring, 1997; 15(1): pp. 213-233.
Article addresses the question of whether Rules 15 and 16, which grant mediators responsibilities that could be characterized as "fact finding," fall within the rubric of mediation. Author contends that Rules 15 and 16 are essential to the mediation process, and that they should be expanded and protected from misuse.
{92} SUBJ MATTER: INT'L

Harrison, John. "Environmental Mediation: The Ethical and Constitutional Dimension." Journal of Environmental Law; Spring, 1997; 9(1): pp. 79-102.
Article explores the use of mediation in environmental disputes against the backdrop of the United States Constitution. By examining the separation of powers and easy access to courts enjoyed by U.S. citizens, the author regards mediation as both a cure for the crowded U.S. court system and as a cause of potential subversion of agency power.
{84} SUBJ MATTER: ENVIRONMENT

Hauer, Harvey I. "Making Mediation Work." Family Advocate; Spring, 1997; 19(4): pp. 26-27.
Article provides a concise overview of mediation in divorce proceedings, specifically in Michigan. Author praises the virtues of mediation and concludes that parties should try mediation before resorting to traditional litigation.
{85} SUBJ MATTER: FAMILY (DOMESTIC REL)

Hay, Bruce L. "Procedural Justice - Ex Ante vs. Ex Post." UCLA Law Review; August, 1997; 44(6): pp. 1803-1850.
Author suggests that justice for an individual requires the use of a litigation process that the litigant chooses before a dispute arises, ex ante, rather than allowing the litigant to offend her autonomy and welfare by implementing her ex post preferences. Author suggests that ex ante litigant decisions take account of behavioral consequences, while ex post decisions on dispute resolution process do not. This article posits that litigant satisfaction often collides with justice, and that satisfaction should not compromise justice in dispute resolution. Author concludes that while the argument for enforcing ex ante preferences is strong, it is a debate that is to be continued.
{151} ROLE OF LAWYERS

Hayes, Christopher G. and Robb, William. "Negotiating a Voluntary Agreement under the Clean Water Act -- The Sunnyside Experience." Colorado Lawyer; March, 1997; 26(3): pp. 95-99.
Article describes the difficulties faced by the Sunnyside Gold Corporation when it closed a mining operation and subsequently tried to discharge its Clean Water Act permits. Authors discuss the negotiation and compromise utilized to resolve the dispute between the company and regulatory agencies. Authors are critical of the substantial obstacles which regulatory agencies put in the way of private parties who wish to discharge their

permits.
{104} SUBJ MATTER: REGULATORY

Heinsz, Timothy J. "Grieve It Again: Of Stare Decisis, Res Judicata and Collateral Estoppel in Labor Arbitration." Boston College Law Review; March, 1997; 38(2): pp. 275-300.
Article focuses on the issue of finality in the labor arbitration context. Author contends that when faced with a prior arbitral decision, arbitrators have traditionally used one of the following approaches: the contractual approach, the incorporation theory or the independent judgment principle. Author recommends a principle of constraint, whereby a prior arbitral decision should be followed unless it is "preposterously wrong."
{93} SUBJ MATTER: LABOR-GENERAL

Himelspach, Daniel C. and Leslie M. Lawson. "Documents in ADR." Colorado Lawyer; October, 1997; 26(10): pp. 33-43.
Author discusses the different forms used in the ADR process. The article gives a general overview of what the basic ADR processes are and what forms will be used during the processes. The article also provides an overview of some of the specific forms involved. The article concludes by noting the importance of the ADR processes and their efficiency of operation facilitated by use of the proper forms.
{38} NON-BINDING RECOMMENDATION PROC-GENERAL
{74} SUBJ MATTER: GENERAL

Hinchey, John W. "Hard Hat Case Notes." Construction Lawyer; April 1997; 17(April): pp. 43-48.
Author discusses two recent arbitration cases. In *Hills Pet Nutrition , Inc. v. Fru-Con Construction Corp.*, 101 F. 3d 63 (7th Cir. 1996), the Seventh Circuit held that when performance begins before a final contract is executed, the parties are bound by mutually agreed upon terms. Where one of the agreed upon terms is an arbitration clause, the parties are obligated to arbitrate issues relating to mutually agreed upon terms, but not so obligated for terms not yet mutually agreed upon. In *Contech Dev. Co. v. University of Connecticut Education Properties, Inc.*, 102 F.3d 677 (2d Cir. 1996), the Second Circuit upheld a lump-sum arbitration award after finding the issue of material breach to be arbitrable given the federal mandate to resolve any doubts regarding the scope of arbitrable issues in favor of arbitration and after finding the award to be final where the arbitrator was presented with all relevant information and arguments

regarding future project costs, which were included in the lump sum award.
{80} SUBJ MATTER: CONSTRUCTION
{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

Hoenig, James K. "Divorce Mediation Basics." The Practical Lawyer; July, 1997; 43(5): pp. 39-50.
The author argues that mediation is a good idea in domestic law matters. The article gives reasons for mediation's utility in divorce cases and includes a step-by-step guide to divorce mediation. The article concludes by providing a checklist for divorce mediation.
{85} SUBJ MATTER: FAMILY (DOMESTIC REL)

Holtzmann, Howard M. "Introduction to the UNCITRAL on Organizing Arbitral Proceedings." Tulane Journal of International and Comparitive Law; Spring 1997; 5(1): pp. 407-443.
Author argues that a basic characteristic of all leading international commercial arbitration rules is that they provide great flexibility for arbitrators to determine how each case will be handled. The benefit of this is that it permits the rules to be used in a variety of legal systems, in many different types of transactions, and in diverse cultures. The author points out that the UNCITRAL Notes on Organizing Arbitral Proceeding (1996), which follow his introduction, do not establish any legal requirement binding on parties and arbitrators. Moreover, the Notes are intended for universal application and are not restricted to cases conducted under UNCITRAL Arbitration rules.
{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL
{92} SUBJ MATTER: INT'L

Hricik, David. "Reflection of a Trial Lawyer on the Symposium: Dialogue with the Devil in Me." South Texas Law Review; May 1997; 38(2): pp. 745-756.
Author writes out dialogue between his two psyche, the zealous advocate and the realistic, balanced attorney. He discusses the duty of disclosure during mediation, the mediator's role in determining "fairness," and whether it is just to require clients to arbitrate disputes with lawyers. Author notes that those seeking to change the duty of lawyers in mediation must be prepared to be confronted by and persuade the many zealous advocates who comprise the firmly rooted adversarial system.
{151} ROLE OF LAWYERS
{21} MED: RELATED PROCESSES-GENERAL

Hunter, Rosemary and Alice Leonard. "Sex Discrimination and Alternative Dispute Resolution: British Proposals in the Light of International Experience." Public Law; Summer, 1997: pp. 298-314.
Article examines the possibility of introducing mediation as a dispute resolution option in sex discrimination cases in Great Britain. Authors argue that mediation is a viable method for dealing with complaints of sex discrimination. Authors describe current sex discrimination in the U.S., Australia, and Great Britain. Authors discuss advantages of and problems with ADR in sex discrimination cases, and conclude that any ADR option for sex discrimination cases must have the objective of promoting and enforcing the 1975 Sex Discrimination Act.
{92} SUBJ MATTER: INT'L
{94} SUBJ MATTER: LABOR-DISCRIMINATION

Icenogle, Marjorie L. and Robert A. Shearer. "Emerging Due Process Standards in Arbitration of Employment discrimination Disputes: New Challenges for Employers." Labor Law Journal; February, 1997; 48(2): pp. 81-90.
Article describes recent legislation and cases involving mandatory arbitration of employment disputes. The author discusses the benefits of arbitration in the employment arena as well as possible Due Process problems. The author predicts increased use of compulsory arbitration, yet recognizes the growing debate over whether ADR is a viable or inferior system of justice.
{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL
{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

Igbokwe, Virtus C. "Developing Countries and the Law Applicable to International Arbitration of Oil Investment Disputes." Journal of International Arbitration; March, 1997; 14(1): pp. 99-124.
Article discusses the controversy surrounding the applicability of international arbitration law to oil investment disputes. Controversy arises from scholars from third-world countries who conclude that the municipal law of the host state should rule investment contracts. Author contends that such a conclusion is premature and that the determination of which law should apply is still unsettled.
{92} SUBJ MATTER: INT'L

Jacob, Anthony J. "Expanding Judicial Review to Encourage Employers and Employees to Enter the Arbitration Arena." John Marshall Law

Review; Summer, 1997; 30(4): pp. 1099-1125.
In his Comment, author recommends use of discretionary judicial review to reduce the disadvantage of the employee who must agree to compulsory arbitration of employment claims as a precondition to employment. By allowing only discretionary judicial review, author believes that courts will not be overburdened, and employers and employees will be encouraged to use arbitration.
{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

Jacobs, Kenneth L. "How to Implement an 'Appropriate Dispute Resolution' Program in Your Litigation Department." Michigan Bar Journal; February 1997; 76(2): pp. 156-159.
Article provides suggestions on how to successfully implement ADR programs in a litigation department. Suggestions include limiting use of ADR to conflicts that are appropriate, convincing others in the firm that ADR is not for sissies and drafting ADR manuals for the department. Author believes that ADR programs are essential to every firm's practice.
{151} ROLE OF LAWYERS

Jensen, Rita Henley. "Divorce - Mediation Style: Engaging in Rational Discussion is more Civilized than Courtroom Sparring, but how Lawyers fit in is an Open Question." American Bar Association Journal; February, 1997; 83(2): pp. 54-59.
This Article looks at the dispute resolution process in the context of divorce. The author examines the requirements promulgated in some states regarding ADR and divorce. The author also presents arguments as to whether mediators should be lawyers, especially in the divorce context. The article also discusses concerns presented when dealing with domestic abuse cases. The author concludes by presenting some possibilities for ADR solutions in divorce proceedings.
{85} SUBJ MATTER: FAMILY (DOMESTIC REL)

Jesse Jr., Franklin C. and Andrew P. Loewinger. "Planning for Dispute Resolution in International Franchising Relationships." International Business Lawyer; May 1997; 25(5): pp. 221-228.
Authors stress that parties to an international franchise relationship are well advised to plan for resolution of disputes that may arise during the course of their working together by tailoring dispute resolution mechanisms to suit the special characteristics of their relationship. Authors explain their master franchise relationship model, used throughout the article, as well as

important characteristics of the master franchise relationship that give rise to disputes. Authors then explain mediation, arbitration, and litigation as they apply to the international franchise relationship. Article next examines choice of law and choice of forum issues. Finally, authors discuss drafting a dispute resolution clause for a master franchise relationship. Authors close by stating that provisions calling for mediation followed by arbitration, tailored to the franchise situation, are usually the best suited for addressing the disputes that arise in the international franchising context.
{92} SUBJ MATTER: INT'L

Johnson, Bryan R., et. al. "Police-Compulsory Arbitration in Michigan: A Logistical Model Analysis of Environmental Factors." Journal of Collective Negotiations in the Public Sector; Winter 1997; 26(1): pp. 27-41.
Study examines the significance of environmental variables in using compulsory arbitration in contract negotiations for public sector law enforcement unions and their respective municipalities in the state of Michigan. Study analyzes 517 jurisdictions in Michigan that provide law enforcement services and shows that cities use arbitration most frequently whereas villages use arbitration least frequently. Study constructs a logistical regression equation to determine which environmental factors influence the use of arbitration. Results of the study show that form of government, wealth of the municipality, number of employees, and location have direct and statistically significant impact on parties who chose arbitration over union bargaining.
{38} NON-BINDING RECOMMENDATION PROC-GENERAL

Jordaan, Jasmine. "Proposal of Dispute Resolution Mechanisms for the Israeli-Palestinian Interim Agreement: A Crucial Sept in Establishing Long-Term Economic Stability in Palestine and a Lasting Peace." Brooklyn Journal of International Law; 1997; 23(2): pp. 555-601.
Article explores the use of ADR as a means of settling disputes under the Israeli-Palestinian Interim Agreement on the West Bank and Gaza Strip. Author suggests that the creation of a binding dispute settlement mechanism would increase economic stability in these areas and would decrease Palestinian hostilities. Author concludes that, in order to further economic growth in Palestine, Israel needs to adopt policies which would advance Palestine's effort to develop its own industries and attract foreign investment.
{92} SUBJ MATTER: INT'L

Joseph, Cassondra E. "The Scope of Mediator Immunity: When Mediators Can Invoke Absolute Immunity." Ohio State Journal on Dispute Resolution; Spring, 1997; 12(3): pp. 629-684.
Article discusses the availability and scope of immunity for mediators. Author argues that mediators should be granted absolute quasi-judicial immunity for any actions taken during the course of mediation. Author believes that this is the best answer in that it shields mediators from excessive liability while still protecting the rights of the parties, who may seek judicial review.
{74} SUBJ MATTER: GENERAL

Kandel, Randy Frances. "Squabbling in the Shadows: What the law can learn from the way divorcing couples use protective orders as bargaining chips in domestic spats and child custody mediation." South Carolina Law Review; Spring, 1997; 48(3): pp. 441-495.
This ethnographic article examines how parents have learned to "reinterpret" the law of protective orders in order to gain a strategical edge in their battle for child custody. The author recommends that, in order to protect their clients, lawyers must educate their clients not only about their rights, but also of the substantive law of protective orders.
{85} SUBJ MATTER: FAMILY (DOMESTIC REL)

Kassoris, Constantine N. "The Betrayal of *McMahon.*" Fordham Urban Law Journal; Winter, 1997; 24(2): pp. 221-234.
Article addresses recent developments regarding whether punitive damages may be awarded in securities arbitrations. Author argues that the cap on punitive damages proposed by the Ruder Report is objectionable and proposes as alternatives that claims for more than the $750,000 cap be removed from arbitration or that the cap be converted to a threshold that would trigger an appeal.
{106} SUBJ MATTER: SECURITIES

Keene, Brian. "The Arbitration Act 1996." New Zealand Law Journal; January 1997: pp. 17-20.
Article describes changes to New Zealand arbitration law due to the enactment of the Arbitration Act 1996. The new Act addresses the autonomy of the parties engaging in arbitration, the importance of equality of treatment of the parties, the importance of confidentiality and arbitrator immunity. The author feels that both practitioners and arbitrators will

benefit from the newly clarified rule.
{92} SUBJ MATTER: INT'L

Kendall, John. "Expert Determination in Major Projects." International Business Lawyer; April 1997; 25(4): pp. 171-173, 179.
Article considers the role that expert determination plays as an alternative form of dispute resolution. Author explains the process of expert determination as well as its historical background and refers to the Channel Tunnel project as an example of the role expert determination plays. Author concludes that expert determination is more flexible than arbitration, and can be used either as a first stage before arbitration or as a substitute for arbitration.
{125} COMPARISONS: HISTORICAL

Kentra, Pamela A. "Hear No Evil, See No Evil, Speak No Evil: The Intolerable Conflict for Attorney-Mediators Between the Duty to Maintain Mediation Confidentiality and the Duty to Report Fellow Attorney Misconduct." Brigham Young University Law Review; Summer, 1997; 1997(3): pp. 715-775.
Article first discusses the mediation process generally before examining confidentiality in mediation and its sources in the law. Discussion then turns to the duty to report attorney misconduct in the Rules of Professional Conduct. Finally, the article confronts the conflict between the duty of confidentiality and the duty to report attorney misconduct and possible solutions including confidentiality statutes with special exceptions for reporting attorney misconduct, amending disciplinary rules to include an exception for misconduct discovered during mediation, creating a mediation privilege and enacting rules of professional conduct which contain an exception for privileged information.
{132} CONFIDENTIALITY
{138} ETHICS: GENERAL

Knibb, Shaunta M. "The Jurisdicational Shadowland between the NLRB and the National Mediation Board: Who's in Charge?" Washington Law Review; January, 1997; 72(1): pp. 241-266.
Comment traces the history of the problem of whether the NLRB has the authority to decide questions of Railway Labor Act jurisdiction. In doing so, the author looks at how the NLRB and the federal courts have handled the problem and explores the analytical shortcomings in two different decisions in relation to who has the authority to determine jurisdiction

between the NLRB and the Mediation Board. Based on her analysis, the author concludes that the NLRB should refer all arguable claims of RLA jurisdiction to the Mediation Board for an initial determination.
{125} COMPARISONS: HISTORICAL
{93} SUBJ MATTER: LABOR-GENERAL

Kovach, Kenneth A. and Margaret W. Meserole. "Collective Bargaining in Professional Sports: Baseball, Football, Basketball, and Hockey." Labor Law Journal; July, 1997; 48(7): pp. 390-402.
Article asserts that the main collective bargaining issues between sports club owners and players are the salary cap and player restraint systems, such as uniform player contracts, the draft, and trade and free agency programs. Courts only become involved to address antitrust issues after collective bargaining fails. The future of professional sports is likely to involve more labor conflicts. Players may unite across different sports because the bargaining issues remain the same, or a true free market may be adopted.
{107} SUBJ MATTER: SPORTS AND ENTERTAINMENT

Kovach, Kimberlee K. "Good Faith in Mediation - Requested, Recommended, or Required? (Symposium: The Lawyer's Duties and Responsibilities in Dispute Resolution)." South Texas Law Review; May, 1997; 38(2): pp. 575-623.
Article suggests that in order for mediation to remain a true alternative to litigation, those participating in mediation proceedings should do so with a good faith effort to cooperate and resolve the dispute. Article discusses some of the difficulties encountered by clients and lawyers as they switch from litigation in the courts to mediation. Author argues that through education and provisions in ADR ethical codes and statutes, good faith in mediation and other ADR methods may be achieved.
{138} ETHICS: GENERAL

Krohnke, Duane W. "Standards for Decisions by Minnesota Court-Annexed Consensual Special Magistrates and Arbitrators." The Hennepin Lawyer; April, 1997; 66(8): pp. 12-16.
Article addresses Minnesota's ADR Review Board's draft ethics code and the state bar association's Conflict Management and Dispute Resolution Section's suggested amendments. Author outlines new rule and discusses its similarities and differences with other ethics codes.
{138} ETHICS: GENERAL

Lambros, Thomas D. "The Summary Jury Trial- Ending the Guessing Game: An Objective Means of Case Evaluation (Response to article by Ann E. Woodley)." Ohio State Journal on Dispute Resolution; Spring, 1997; 12(3): pp. 621-628.
Article, a response to Woodley, sets forth the benefits of using summary jury trials. Author commends Woodley for her model rule, which he believes provides the framework necessary for the discussion of summary jury trials and their use in alternative contexts. While the author largely agrees with Woodley, he would propose the following changes to the model rule: allow for greater flexibility in number of jurors necessary to reflect jurisdictional variations; omit absolute rule barring further discovery after summary jury trial; omit absolute rule barring admission of new evidence if case proceeds to actual trial; and allow for flexibility of scheduling to reflect needs of courts with more demanding dockets.
{133} COURT REFORM

Lande, John. "How Will Lawyering and Mediation Practices Transform Each Other?" Florida State University Law Review; Summer, 1997; 24(4): pp. 839-901.
Article discusses the impact of the integration of mediation into the legal system on both litigators' and mediators' practices. Author calls this legal environment "liti-mediation" culture, in which it becomes assumed that mediation is the normal way to end litigation. Author offers many predictions about the future of mediation is this new culture.
{21} MED: RELATED PROCESSES-GENERAL

Lee, Soo Sandra Jin. "Is Sky Reefer in Jeopardy? The MLA's Proposed Changes to Maritime Foreign Arbitration Clauses." Washington Law Review; April, 1997; 72(2): pp. 625-653.
Article discusses the Maritime Law Association's proposed revision of the Carriage of the Goods by Sea Act that would deny the enforcement of foreign arbitration clauses. Author argues that Congress should reject this revision because of the potential disruption non-enforcement would bring to maritime trade and international commerce. Author further asserts that the Maritime Law Association should reconsider its position and recommend revisions consistent with the United States Supreme Court's decision in *Vimar Seguros y Reaseguros S.A. v. M/V/ Sky Reefer* (1995).
{97} SUBJ MATTER: MARITIME

Lehrburger, Lillian S. and Margaret Van Cleave. "Appropriate Dispute Resolution in Bolder Community Hospital: an ADR Approach to Self-healing." Colorado Lawyer; October, 1997; 26(10): pp. 43-48.
Author talks about the experience of Bolder Community Hospital in developing and implementing a multi-step conflict resolution program. Author claims that the Bolder Community Hospital example is illustrative of the creative potential for internal dispute resolution systems to minimize damage from internal conflict. Furthermore, the author contends that the Bolder Community Hospital program illustrates well a grievance procedure that is tailored to the goals of the organization.
{89} SUBJ MATTER: HOSPITALS

Lesser, Stephen B. "The Inadvertent Waiver of Mandatory Construction Arbitration Clauses." Florida Bar Journal; October, 1997; 71(9): pp. 12-20.
Author discusses the current state of the law regarding waivers of mandatory arbitration clauses in construction contracts. The author discusses the benefits and disadvantages of mandatory arbitration in construction cases and attempts to provide an overall perspective of the arbitration process. The author concludes that it is important for construction litigators to understand the benefits and detriments of arbitration and how to preserve the right to mandatory arbitration in construction cases in order to best represent their construction industry clients.
{80} SUBJ MATTER: CONSTRUCTION

Love, Lela P. "Mediation: The Romantic Days Continue (Symposium: The Lawyer's Duties and Responsibilities in Dispute Resolution)." South Texas Law Review; May, 1997; 38(2): pp. 735-744.
Article is a comment on the debate on ethical issues in ADR. Article was written in response to South Texas College of Law's symposium titled, "The Lawyer's Duties and Responsibilities in Dispute Resolution." Author points to common values shared by the symposium's participants and argues that articulating these points of consensus can direct and guide the debate on ethical issues in ADR.
{138} ETHICS: GENERAL

Love, Lela P. "The Top Ten Reasons why Mediators Should Not Evaluate." Florida State University Law Review; Summer, 1997; 24(4): pp. 937-948.

The Article provides a discussion of the debate over whether mediators should "evaluate." The author believes that the debate revolves around the confusion over what constitutes evaluation and an "evaluative" mediator. The author focuses on the fact that evaluating, assessing, and deciding for others is radically different than helping others evaluate, assess, and decide for themselves.
{21} MED: RELATED PROCESSES-GENERAL

Luthar, Harsh K. and Joseph Bonnici. "Arbitration in Higher Education: Opportunities and Challenges." Journal of Collective Negotiations in the Public Sector; Winter, 1997; 26(1): pp. 9-25.
Article explores the usefulness of arbitration in academe. Authors note that those opposed to the use of an arbitrator in academe argue that an arbitrator is inappropriate because the arbitrator does not have an understanding of the special norms, values and traditions of institutions of higher learning. Authors argue that this problem may be overcome and advocate the use of arbitration in institutions of higher learning.
{83} SUBJ MATTER: EDUCATION
{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

Mains, Steve A. "Alternative Dispute Resolution: What's Next?" Colorado Lawyer; October, 1997; 26(10): pp. 53-55.
The author makes predictions in the field of ADR based on recent trends. The author uses an informational survey of ADR practitioners as the basis of his predictions. Among the author's predictions are that ADR will be used more, that it will be used more skillfully and creatively and that it will be used more proactively.
{74} SUBJ MATTER: GENERAL

Mann, Kimberly J. "Constitutional Challenges to court-ordered arbitration." Florida State University Law Review; Summer, 1997; 24(4): pp. 1055-1067.
This Article examines the belief by some that mandatory, nonbinding arbitration deprives them of certain federal and state constitutional rights. The author explores claims that arbitration deprives parties of their constitutional right to a jury trial and examines due process challenges to arbitration. In addition, the author considers claims that arbitration violates the doctrine of separation of powers and the Equal Protection Clause. Finally, the author considers whether parties who are ordered to arbitration are denied access to the courts. The author concludes that constitutional

challenges against arbitration programs are unlikely to succeed because such programs generally do not place sufficiently heavy burdens upon litigants to violate the Constitution.
{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

Marczely, Bernadette. "The Role of the Civil Rights Act of 1991 and Collective Bargaining in Maintaining Gender Discrimination in Higher Education." Journal of Collective Negotiations in the Public Sector; Spring, 1997; 26(2): pp. 113-124.
Article discusses Title VII and the Civil Rights Act of 1991 in the context of gender discrimination in higher education. Author examines binding arbitration, the Equal Employment Opportunity Commission (EEOC) and court action as ways to address problems of gender discrimination. Author concludes that the Civil Rights Act of 1991 has made pursuing a gender discrimination suit more time-consuming, costly and difficult.
{94} SUBJ MATTER: LABOR-DISCRIMINATION

Maria, Diana Santa and Marc A. Gregg. "The role of ADR clauses in avoiding foreign litigation entanglements." Canadian Business Law Journal; June 1997; 28(3): pp. 415-429.
The article examines the impact of the Morguard decision on enforcing foreign judgements in Canada. The authors ague that inclusion of an ADR clause in transborder commercial agreements is a post-Morguard necessity. To further their argument, the authors use a hypothetical contract between a U.S. and Canadian company. Authors contend that the risk of a serious award of damages could be reduced by 10% simply by including an ADR clause.
{92} SUBJ MATTER: INT'L
{76} SUBJ MATTER: COMMERCIAL
{136} ECONOMIC ADVANTAGES OF ADR

Martell, Patrick J. "The Net and Beyond: Dispute Resolution for the High Tech Company (with Forms)." Practical Lawyer; March, 1997; 43(2): pp. 43-62.
Article focuses on what high tech companies can do to minimize damage from legal disputes. Author recommends alternative dispute resolution over traditional litigation because with ADR, the engineers and business managers (as opposed to the lawyers) resolve the dispute. Author provides model ADR documents.
{105} SUBJ MATTER: SCIENCE, COMPUTERS & TECHNOLOGY

{136} ECONOMIC ADVANTAGES OF ADR

Martha, Rutsel Silvestre J. "Presumptions and Burden of Proof in World Trade Law." Journal of International Arbitration; March, 1997; 14(1): pp. 67-98.
Article discusses the risk of non-persuasion in settlements of disputes under the auspices of the World Trade Organization. Author examines the responsibilities of the world trade adjudicator with respect to burden of proof. Author states the general rule that the party asserting a fact in dispute has the burden of proving it.
{92} SUBJ MATTER: INT'L
{146} ORGANIZATION POLICIES AND RULES

McAdoo, Barbara and Nancy Welsh. " Does ADR Really Have a Place on the Lawyer's Philosophical Map?" Hamline Journal of Public Law and Policy; Spring, 1997; 18(2): pp. 376-393.
Article analyzes the effectiveness of mandatory ADR procedures by using the Hennepin County District Court procedures as a case study. After noting that studies have shown that ADR has not provided significant monetary or time savings to participants, the article concludes that the attorneys using the system have stifled the effectiveness of the processes by attempting to integrate the system within the litigation framework. The authors posit that attorneys must place more value on client satisfaction, client control of the outcome, and improved party relationships in order to fully benefit from the ADR procedures.
{127} REQUIREMENTS: MANDATE TO USE
{151} ROLE OF LAWYERS

McCabe, Michael A. "Class Backwards: Does the Fairness, Adequacy and Reasonableness of a Negotiated Class Action Settlement Really Have Any Effect on Approval?: *General Motors Corp. v. Bloyed*, 16 S.W.2d 949 (Tex. 1996)." Texas Tech Law Review; Winter, 1997; 28(1): pp. 159-186.
This Note focuses on the Texas Supreme Court's decision in *General Motors Corp. v. Bloyed*, 16 S.W.2d 949 (Tex. 1996). The Note first discusses the chronology of cases implementing the modern test for determining whether a negotiated class action settlement should be approved and the adoption of Rule 23 of the Federal Rules of Civil Procedure by the Texas Supreme Court in Rule 42 of the Texas Rules of Civil Procedure. The Note then discusses the *Bloyed* decision in detail, specifically analyzing the Texas Supreme Court's holding that the trial

court had correctly analyzed the fairness of the proposed settlement according to the six factors noted in *Ball v. Farm & Home Savings Ass'n.* Finally, the author argues that the *Bloyed* holding creates the potential for attorney abuse and future class action plaintiffs to lose their means of recourse through negotiated class action settlements.
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

McGlothlen, Condon A. and Gary N. Savine. "Eckles v. Consolidated Rail Corp.: Reconciling the ADA With Collective Bargaining Agreements: Is This the Correct Approach? (Symposium: Individual Right and Reasonable Accommodation Under the American With Disability Act)." Depaul Law Review; Summer, 1997; 46(4): pp. 1043-1055.
Article discusses the conflict between the Americans with Disabilities Act (ADA) and terms of collective bargaining agreements, focusing on the 7th Circuit decision, *Eckles v. Consolidated Rail Corp.* The author illustrates the debate over whether the Act may require an employer to take action contrary to the terms of a collective bargaining agreement. The author concludes that the *Eckles* decision failed to resolve the tension between individual and collective rights under the ADA.
{93} SUBJ MATTER: GENERAL
{94} SUBJ MATTER: DISCRIMINATION

McGovern, Francis E. "Rethinking cooperation among judges in mass tort litigation." UCLA Law Review; August, 1997; 44(6): pp. 1851-1870.
Author gives a review of the different types of mass tort cases and separates them on the basis of: liability, specific causation, value and funding. The main thrust of the article concerns judicial cooperation as a means to improving dispute resolution in mass tort litigation. Author uses asbestos and silicone gel breast implant cases as examples of the need for judicial cooperation, and proposes some applicable rules. The author also hypothesizes that benefits are increased and resistance is reduced the earlier and more comprehensive the cooperation happens in the litigation cycle.
{110} SUBJ MATTER: OTHER TORTS

McGrath, Andrea. "The Corporate Ombuds Office: An ADR Tool no Company Should be Without." Hamline Journal of Public Laws and Policy; Spring, 1997; 18(2): pp. 452-486.
Article explores the ombuds concept as a tool for resolving internal company disputes and for preventing them from reaching the litigation

process. Author contends that more corporations need ombuds and provides suggestions for successful implementation. Article concludes with a critique of one company's dispute resolution program.
{145} OMBUDSPERSON

McLaughlin, Peter F. "Legal and Cultural Issues When Negotiating M&A Transactions in Europe: An Italian Example." International Law Practicum; Spring, 1997; 10(1): pp. 21-28.
The author highlights the potential problems that can arise in international merger and acquisition negotiations because of cultural and legal differences. Using Italy as an example, the article notes that different methods of valuation, the importance of family and differing accounting methods can all lead to unsuccessful mergers. Although warning that each specific country and company will raise its own set of issues, the author hopes that the article can be used as an outline to international negotiation.
{81} SUBJ MATTER: CORPORATE
{92} SUBJ MATTER: INT'L

McMonigle, Joseph P. and Thomas. Weathers. "A new way to go: arbitration of legal malpractice claims." Defense Counsel Journal; July, 1997; 64(3): pp. 409-413.
Author assesses the enforceability of arbitration clauses in lawyer-client retainer agreements and promotes arbitration as a less expensive and more private means of resolving legal malpractice cases. Author surveys that, despite Rule 1.8(h) of the ABA Model Rules of Professional Conduct, several states have allowed such arbitration clauses, most notably California. Moreover, he advances several steps which help to insure the enforceability of such arbitration clauses by making them unambiguous and understood.
{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL
{99} SUBJ MATTER: OTHER PROF MALPRACTICE
{136} ECONOMIC ADVANTAGES OF ADR

Mehta, Aseem. "Resolving Environmental Disputes in the Hush-hush World of Mediation: A Guideline for Confidentiality." Georgetown Journal of Legal Ethics; Spring, 1997; 10(3): pp. 521-540.
The author contends that as the use of mediation in environmental disputes increases, issues involving confidentiality increase as well. Author presents a rebuttable presumption in favor of confidentiality in mediation of environmental disputes. Author proposes confidentiality enforced by

judicial system on a case by case basis, and not through legislation.
{84} SUBJ MATTER: ENVIRONMENT
{132} CONFIDENTIALITY

Menkel-Meadow, Carrie. "When Dispute Resolution Begets Disputes of its Own: Conflicts Among Dispute Professionals." UCLA Law Review; August, 1997; 44(6): pp. 1871-1933.
Article discusses how the growth of ADR has spawned disputes and conflicts among the very people who manage ADR procedures - ADR professional themselves. Article reviews in detail specific conflicts that arise and suggests resolutions to these conflicts.
{149} QUALITY CONTROL

Menkel-Meadow, Carrie. "Ethics in Alternative Dispute Resolution: New Issues, no Answers from the Adversary Conception of Lawyer's Responsibilities (Symposium: The Lawyer's Duties and Responsibilities in Dispute Resolution)." South Texas Law Review; May, 1997; 38(2): pp. 407-454.
Article questions whether existing rules of ethics for lawyers can sufficiently govern the practice of ADR. Author argues that the Model Rules of Professional Conduct and the Code of Judicial Conduct are not responsive to the needs of ADR. Author calls for a set of ethical rules to govern ADR.
{138} ETHICS: GENERAL

Mettera, Richard J. "Has the Expansion of Arbitral Immunity Reached Its Limits after *United States v. City of Hayward*?" The Ohio State Journal on Dispute Resolution; Spring, 1997; 12(3): pp. 779-799.
Article discusses the genesis and expansion of arbitral immunity, as well as the impact of a recent court decision. Article presents arguments for both a qualified immunity standard and an absolute immunity standard.
{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

Milhorn, Brandon L. "*Vimar Seguros Y Reaseguros v. M/V Sky Reefer*: Arbitration Clauses in Bills of Lading under the Carriage of Goods by Sea Act." Cornell International Law Journal; Winter, 1997; 30(1): pp. 173-202.
Article details the history of the Carriage of Goods by Sea Act (COGSA) and examines the common law relating to maritime bills of lading and the attempt to establish international uniformity. Article recounts the U.S.

application of COGSA to foreign forum selection and foreign arbitration clauses found in bills of lading. Author chronicles the courts' decisions, contrasting the First Circuit's holding with the holding of the U.S. Supreme Court. Author examines the possible economic consequences of *Sky Reefer* and concludes that *Sky Reefer* has restored the imbalance of market power in favor of the carrier.
{97} SUBJ MATTER: MARITIME

Minnick, David M. "Breach of Fiduciary Duty in Securities Arbitration." Journal of the Missouri Bar; July/August, 1997; 53(4): pp. 210-212.
A brief explanation of the fiduciary duty in broker/dealer-customer/investor relationships, as controlled by several states' laws. Author focuses on investors' claims for breach of fiduciary duty and how, since *Shearson/American Express v. McMahon*, 482 U.S. 220 (1987), this has evolved arbitration forums into much more complex ones than they were designed to be. Author surmises that securities arbitration can be a cost-effective forum when it thoughtfully analyzes the parties' role in each case.
{106} SUBJ MATTER: SECURITIES

Moberly, Robert B. "Mediator Gag Rules: Is it Ethical for Mediators to Evaluate or Advise (Symposium: The Lawyer's Duties and Responsibilities in Dispute Resolution)." South Texas Law Review; May, 1997; 38(2): pp. 669-679.
Article addresses the question of whether mediators should offer evaluation and advice to participants in a mediation. Author argues that as a matter of the nature of human relationships, prohibiting evaluation and advice is unrealistic. Furthermore, the author argues that evaluation and advice is what many parties seek when submitting their dispute to mediation. Article concludes that a mediator should be able to evaluate and advise so long as safeguards exist to insure that the mediator's advice does not act to "bind" the parties.
{138} ETHICS: GENERAL
{21} MED: RELATED PROCESSES-GENERAL

Morrisson, Scott S. "Consider Binding Arbitration to Resolve your Next Dispute." Res Gestae; May, 1997; 40(11): pp. 18.
Article provides an overview and practical analysis of the normal arbitration procedures employed in Indiana. Author points out the advantages and disadvantages to the use of binding arbitration. Author concludes that the reader should consider using binding arbitration in

lawsuits.
{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

Mosten, Forrest S. and Phyllis Gangel-Jacob. "Mediation in Divorce Cases: Two Views." Trial; August, 1997; 33(8): pp. 43-44.
Article presents the views of two noted experts in the area of family law. The first author discusses both client and lawyer benefits of mediation in divorce cases, including cost savings, privacy, time savings, stress reduction, client-generated solutions, improved profitability, reduced malpractice exposure and creative lawyering. First author concludes that lawyers using mediation will likely be more satisfied in their careers, seeing themselves more as helpers. The second author advocates mediation, but strongly argues for the use of neutrals and independent counsel schooled in matrimonial law. She further asserts that the goal of mediation should be "just" settlement, not just settlement at all.
{85} SUBJ MATTER: FAMILY (DOMESTIC REL)

Murr, George G. "In the Matter of Marriage of Ames and the Enforceability of Alternative Dispute Resolution Agreements: A Case for Reform." Texas Tech Law Review; Winter, 1997; 28(1): pp. 31-58.
This article discusses and contrasts the Texas Alternative Dispute Resolution Act, which recodified and amended the Texas Arbitration Act with the decision of the Texas Court of Appeals in Amarillo in *In re Matter of Marriage of Ames*. It purports that while the *Ames* court properly gave effect to the stated policy behind the statute, the language in the operative section of the statute does not. Consequently, the author proposes a statutory revision to ensure the enforceability of ADR agreements, which will thereby align the statute's language with the statute's policy.
{144} LEGISLATION

Myers, Edward B. "The Future is Now: Mediation & Mergers in Energy Industry." Natural Resources and Environment; Summer, 1997; 12(1): pp. 56-58.
Article describes the benefits of mediation generally and as applied in the context of utility mergers. Author argues that under the Federal Energy Regulatory Commission's guidelines, hearings may avoided via "pre-filing consensus building," mediation is the best method of resolving utility merger disputes, and concludes that parties likely will re-evaluate and accept the use of mediation in order to expedite merger proceedings.
{103} SUBJ MATTER: PUBLIC UTILITIES

Nafziger, James A. R. "International Law in the Americas: Rethinking National Sovereignty in an Age of Regional Integration: Articles & Essays: NAFTA's Regime for Intellectual Property: In the Mainstream of Public International Law." Houston Journal of International Law; Spring, 1997; 19(3): pp. 807-828.
Article discusses the issue of enforcement of intellectual property rights in the international arena and the arbitration provisions in NAFTA. Author contends that the general consensus as to the provisions is favorable, though significant hurdles will have to be overcome in implementing Chapter 17 of NAFTA.
{92} SUBJ MATTER: INT'L

Nariman, Fali S. "Courts and Arbitrators: Paradigms of Arbitral Autonomy." Boston University International Law Journal; 1997; 15(1): pp. 185-190.
Author explains why many third world countries are suspicious of international arbitration. Author suggests that if international arbitration is to become widely trusted, arbitrators must limit their roles to rendering decisions strictly according to the rules of law agreed to by the parties. Adopting transnational rules which displace the agreed-upon rules of law would serve to deepen distrust of the process.
{92} SUBJ MATTER: INT'L

Needham, Carol A. "When is an Attorney Acting as an Attorney: the Scope of Attorney-Client Privilege as Applied in Corporate Negotiations. (Symposium: The Lawyer's Duties and Responsibilities in Dispute Resolution)." South Texas Law Review; May, 1997; 38(2): pp. 681-703.
The article examines the differing views of what activities fall within the scope of a person's role as an attorney. Specifically, the author presents a hypothetical to illustrate the weaknesses of the "traditional lawyer functions" test, "applying the law" test and the Restatement test. Author argues that a client's communications with a negotiating attorney should be privileged and contends that the "applying the law" test is the lesser evil because it can be used to identify communications occurring during negotiations which should be protected by the privilege.
{132} CONFIDENTIALITY
{151} ROLE OF LAWYERS

Newman, Lawrence W. "International Arbitration Hearings: Showdown or Denouement?" Tulane Journal of International and Comparative Law; Spring 1997; 5(1): pp. 393-399.
Author argues that international arbitrations are characterized by cultural conflicts, misunderstandings and frustration with the arbitration process. The author notes that this is particularly true at the evidentiary hearing stage. Author posits that addressing matters relating to hearings during prehearings or preliminary conferences has the salutary effect of easing much of this cultural tension. Prehearing and preliminary conferences ensure that both participants and arbitrators share expectations as to how arbitration will proceed.
{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL
{92} SUBJ MATTER: INT'L

Nicolau, George. "Whatever Happened to Arbitral Finality? Is it Their Fault or Ours? (Judges or Arbitrators)." Labor Law Journal; May 1997; 48(5): pp. 259-271.
Speech presented March 20, 1997 at the Stetson University College of Law Twelfth Annual National Conference on Labor and Employment Law. Speech discusses problem of uncertainty as to whether labor arbitration will be final and binding given scrutinizing review of abitrators' decisions by the courts. Speaker explains cases where labor arbitrators' decisions have been subject to court review. Finally, speaker provides practical tips for arbitrators to make their decisions final, binding, and upheld by court review.
{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL
{95} SUBJ MATTER: LABOR-MANAGEMENT (UNIONS)
{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

Ortner, Sally K. and Merrill Shields. "A Report on the Development of Qualifications and Standards of Conduct for ADR Professionals." Colorado Lawyer; October, 1997; 26(10): pp. 49-52.
Author discusses steps taken in Colorado toward establishing standards of conduct and qualifications for ADR professionals. The article specifically discusses the qualifications and training necessary for one to "hang out a mediator/arbitrator shingle." The article also attempts to generally explain what exactly "mediators" and an "arbitrators" are.
{146} ORGANIZATION POLICIES AND RULES

{149} QUALITY CONTROL

Page, Reba and Wesley C. Jockish. "Increasing the Voluntary Use of Judicially Assisted ADR." Judges Journal; Winter, 1997; 36(1): pp. 32-36.
Article discusses the declining use of judicially assisted ADR. Authors state that judicially assisted ADR is desirable because it permits disputants to resolve issues that lack settlement potential. Authors argue that the use of judicially assisted ADR is underutilized due to a misunderstanding of statutes and regulations that promote the use of ADR. In order to aid in the understanding of these statutes and regulations, the article briefly examines the application of ADR at agency and judicial levels.
{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL
{133} COURT REFORM

Paradise, Gregg A. "Arbitration of Patent Infringement Disputes: Encouraging the Use of Arbitration Through Evidence Rules Reform." Intellectual Property Law Review; 1997; 29: pp. 159-191.
Article is concerned with the relatively infrequent use of binding arbitration for intellectual property disputes. Author contends that arbitration offers many advantages to the parties involved in these disputes and that one of their main reasons for not using the system is arbitration's lack of conformity to the rules of evidence. Author proposes that the use of a modified version of the Federal Rules of Evidence wold provide the necessary incentive for parties to seek arbitration of their intellectual property disputes.
{105} SUBJ MATTER: SCEINCE, COMPUTERS & TECHNOLOGY
{133} COURT REFORM

Pardieck, Andrew W. "Virtuous Ways and Beautiful Customs: The Role of Alternative Dispute Resolution in Japan." Temple International and Comparative Law Journal; Spring, 1997; 11(1): pp. 31-56.
This article examines the following Japanese alternative dispute resolution methods: compromise, conciliation and arbitration. The author provides examples of various commissions used in these alternative dispute methods.
{92} SUBJ MATTER: INT'L

Park, William W. "Text and Context in International Dispute Resolution." Boston University International Law Journal; Spring, 1997; 15(1): pp. 191-212.
Article discusses problems of international forum selection for both

arbitration and litigation. Author suggests that agreements to arbitrate international disputes may be reliably enforced due to provisions of the New York Arbitration Convention, the Federal Arbitration Act and the inapplicability of the Act of State doctrine. Author suggests that drawbacks of international arbitration include "wild card" arbitrators, consolidation of related actions, monitoring arbitrator jurisdiction and in the United States, the interaction of state and federal law. Author also discusses interaction of choice of law, choice of forum and drafting international arbitration agreements.
{92} SUBJ MATTER: INT'L

Pears, Ian. "Mediation: A State of Mind." Solicitors Journal; August 15, 1997; 141(33): pp. 799.
Article discusses the possible benefits of the NHS Executive's launch of a two-year mediation project for medical negligence cases. The author cautions, however, that until the previous rigid medical negligence culture is altered, successful mediations, where patients feel their issues have been sufficiently resolved, will not result.
{98} SUBJ MATTER: MEDICAL MALPRACTICE

Pickens, Andrew L. "Appraisement: An Old but Effective Form of ADR for Contract Liabilities." Texas Bar Journal; January 1997; 60(1): pp. 18-24.
Article illustrates the differences between arbitration and appraisement. The Author follows the history of appraisement and points to its usefulness in insurance and contract disputes.
{91} SUBJ MATTER: INSURANCE

Picker, Sydney. "The NAFTA Chapter 20 Dispute Resolution Process: A View From the Inside." Canada-United States Law Journal; Annual, 1997; 23: pp. 525-540.
Article provides select proceedings of the Canada-United States Law Institute Conference which was held in Cleveland from April 18-20, 1997. Author discusses three particular topics pertaining to the Chapter 20 dispute resolution process of NAFTA: panel discussion, the rationale and effect of the initial/final report process producing the final decision and the institutionalization of dispute resolution under NAFTA. Author notes a variety of problems and offers suggestions to alleviate those problems.
{92} SUBJ MATTER: INT'L

Plapinger, Elizabeth and Stienstra, Donna. "ADR and settlement in the federal district courts: a sourcebook for judges & lawyers." Federal Rules Decisions; July, 1997; 172(2): pp. 550-607.
A joint publication of the Federal Judicial Center, this sourcebook serves as a resource guide to inform lawyers and judges about the rules and procedures of ADR in the federal courts. Authors provide a district-by-district description of current ADR and settlement procedures in each of the 94 federal district courts and seven tables which compare various specifics of federal ADR. Authors contend that this information is valuable in ensuring quality of process as ADR becomes more prominent in district courts.
{87} SUBJ MATTER: GOV'T
{128} REQUIREMENTS: STATUTORY OR RULES
{133} COURT REFORM

Ponder, Patricia J. "Alabama's arbitration cases: where does the non-signatory stand?" The Alabama Lawyer; July, 1997; 58(5): pp. 246-250.
Author gives a brief history of the enforceability of arbitration clauses in Alabama and concludes that even after *Allied-Bruce Terminix, Inc. v. Dobson*, 513 U.S. 265 (1995), there is still uncertainty as to how broadly Alabama courts will construe arbitration provisions. The Alabama Supreme Court has flippantly adhered to the FAA, and this author advises that Alabama more closely follow the federal law in allowing non-signatories to compel arbitration.
{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

Potter, Simon. "Dispute Resolution Under NAFTA: A Canadian Perspective." Canda-United States Law Journal; Annual, 1997; 23: pp. 151-156.
Article provides select proceedings of the Canda-United States Law Institute Conference which was held in Cleveland from April 18-20, 1997. Author is concerned with Canadian impressions of the effectiveness of dispute resolution under NAFTA. Author contends that Canadian businesses would probably conclude that the system is a favorable alternative to the system used under the previous Canda-United States Free Trade Agreement. However, author also notes that the system has a variety of problems, many of which are the result of American actions, that demand attention and reform.
{92} SUBJ MATTER: INT'L

Powers, Jean Fleming. "Ethical Implications of Attorneys Requiring Clients to Submit Malpractice Claims to ADR." South Texas Law Review; May, 1997; 38(2): pp. 625-668.
Article deals with ethical issues that arise under retainer agreements that require mandatory ADR of disputes between lawyer and client. Article explores the danger of these agreements for clients, and suggests that there is no currently existing safeguard against these dangers. Authors proposes that pre-dispute ADR contracts between lawyer and client should be regulated by the development of a professional rule of conduct in order to safeguard the client.
{99} SUBJ MATTER: OTHER PROF MALPRACTICE
{138} ETHICS: GENERAL

Powers, James J. "'Partnership Buster' in the Federal Government: The Relationship between 5 U.S.C. 7106(a) and (b)(1)." Chicago-Kent Law Review; Summer, 1997; 72(3): pp. 837-874.
This article analyzes the Federal Service Labor-Management Relations Statute (FSLMRS) to ascertain the proper relationship between prohibited and permissive subjects of bargaining in the federal sector. The author describes the differences between private and federal sector labor relations, FSLMRS's legislative history and case law interpreting the proper relationship between § 7106(a) and (b); Executive Order 12871 and its impact on future agency-union negotiations relative to § 7106(b)(1) subjects; and the ACT court's decision on the relationship between § 7106(a) and (b)(1).
{95} SUBJ MATTER: LABOR-MANAGEMENT (UNIONS)

Press, Sharon. "Institutionalization: Savior or Saboteur of Mediation?" Florida State University Law Review; Summer, 1997; 24(4): pp. 903-917.
Article discusses the increased institutionalization of mediation in recent years. Author contends that this increased institutionalization has created a host of concerns, both positive and negative, and that discussion of these concerns is particularly timely.
{21} MED: RELATED PROCESSES-GENERAL

Purcell, Heather A. "State International Arbitration Statutes: Why They Matter." Texas International Law Journal; Summer, 1997; 32(3): pp. 525-544.
Article outlines types of state international arbitration statutes, how they arose, how they are affected by federal law and treaties to which the U.S.

is a party, and how domestic courts have dealt with them. Author predicts that as more states seek to attract international business these statutes will become more prevalent. These statutes are important where parties choose state law to apply to international arbitration and where the state statutes fill gaps in a way that is harmonious with federal law. While some have called for complete federalization of arbitration law, a trend of devolution of federal power and decision-making to the states combined with emphasis on party autonomy may increase the importance of state international arbitration statutes.
{92} SUBJ MATTER: INT'L

Rau, Allan Scott. "Integrity in Private Judging (Symposium: The Lawyer's Duties and Responsibilities in Dispute Resolution)." South Texas Law Review; May, 1997; 38(2): pp. 485-539.
Article argues that in order for arbitration to meet party's expectations and fulfill its original goals, it should remain a form of self government and should, therefore, be largely immune from state intervention. Article suggests that ethics in arbitration should be understood through the lens of contract rather than adjudication. Author notes that arbitration grew out of a commitment to self-determination as expressed in contractual arrangement for the private settlement of disputes. Author argues that state intervention has the effect of hindering arbitration's commitment to self-determination and that in the arbitration arena state intervention should, therefore, be discouraged.
{138} ETHICS: GENERAL

Regan, Richard R. "Dividing the Personal Injury Settlement Pie: The Negotiation of Subrogation Interests and Liens." Maine Bar Journal; March, 1997; 12(3): pp. 98-105.
Article focuses on the problem of low bottom-line payments to plaintiffs who have won personal injury settlements. Author recommends negotiating outstanding liens and subrogation interests to alleviate this problem. Author discusses this strategy with respect to certain types of liens and subrogation interests.
{91} SUBJ MATTER: INSURANCE
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

Reuben, Richard C. "Public Justice: Toward a State Action Theory of Alternative Dispute Resolution." California Law Review; May 1997; 85(3):

pp. 577-641.
Author discusses how courts must now address the question of whether both court-related and contractual-related ADR can constitute state action, and therefore be subject to constitutional restraints. The author surveys the history and modern structure of ADR, and, focusing primarily on arbitration, analyzes it in light of the United States Supreme Court's state action doctrine. He concludes that both court-related and contractual ADR can constitute state action, and therefore be subject to constitutional protections, such as due process, at some level.
{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL
{125} COMPARISONS: HISTORICAL

Richards, Christopher. "The Expertise of Mediating." Family Law; January, 1997; 27(1): pp. 51-52.
Brief article discusses the role of the mediator in the context of family law. Author concludes that the role of the mediator is an important one alongside that of the therapist. However, the author states that the two must work together to achieve resolution.
{85} SUBJ MATTER: FAMILY (DOMESTIC REL)

Rogers, John R. "Securities Arbitration in B.C.: A Solution in Search of a Problem?" The Advocate; January, 1997; 55(1): pp. 53-62.
Article compares the investment community of British Columbia with that of the United States. In doing so, it takes a look at the pilot project launched by the Investment Dealer's Association of Canada and the Vancouver Stock Exchange under the management of the Vancouver Centre for Commercial Disputes of the British Columbia International Commercial Arbitration Centre. This pilot project allows for arbitration of disputes in the investment industry in British Columbia. Article goes on to discuss the experience of the pilot project and to discuss the situation in the United States. Author concludes that the Canadian investment community can learn from the mistakes of the securities arbitration process in the United States to build a viable alternative to litigation for the Canadian investment community.
{92} SUBJ MATTER: INT'L
{106} SUBJ MATTER: SECURITIES

Rogers, Andrew and Duncan Miller. "Non-confidential Arbitration Proceedings." Australian Law Journal; June 1997; 71(6): pp. 436-458.
This article attempts to define the scope of the public interest exception to

the confidentiality of private arbitration proceedings in Australia. Author examines the English law's treatment of the issue - namely, the trend toward a more flexible regime. In reviewing the English law, the author argues that if England were to adopt a public interest exception to the general rule that arbitration proceedings are to be confidential, it should precisely define the ambit of the exception. Author argues that Australian courts need to reconsider what requirements should be imposed on a party seeking to disclose otherwise confidential information that was obtained during arbitration.
{92} SUBJ MATTER: INT'L
{132} CONFIDENTIALITY

Rossdale, Philip. "Arbitration on Probate." Solicitor's Journal; April 25, 1997; 141(16): pp. 380.
Author draws attention to the possibility of disposing of a dispute about probate by arbitration under the (British) Arbitration Act 1996. Author discusses basics about parties to probate proceedings, the right to enforce a probate arbitration award, and the method of enforcing such an award. It is a very brief, yet seemingly potent article.
{92} SUBJ MATTER: INT'L

Roumell, George T., Jr. " Yes Virginia, Arbitration Can Be Binding." Michigan Bar Journal; February, 1997; 76(2): pp. 168-170.
Author examines two recent cases, *Dick v. Dick* and *Brucker v. McKinley*, and their use of ADR. In order to create an effective, binding arbitration agreement, the parties must draft an agreement that follows both court rules and applicable statutes.
{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL
{128} REQUIREMENTS: STATUTORY OR RULES

Rovine, Arthur W. "The Scope of Discovery in International Arbitral Proceedings." Tulane Journal of International and Comparative Law; Spring 1997; 5(1): pp. 401-406.
Author argues that efficient international arbitration proceedings require the balancing of procedural flexibility with certainty in the discovery process. According to the author, contracting parties need to understand how preliminary matters like the scope of discovery, confidentiality and the place of arbitration can impact upon the arbitration proceedings. The article's discussion of discovery is limited to discovery of documents because, in the author's view, most important questions in international

arbitration involved document production.
{92} SUBJ MATTER: INT'L
{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

Ruhl, J.B. "Thinking of mediation as a complex adaptive system." Brigham Young University Law Review; Summer, 1997; 1997(3): pp. 777-801.
Article analyzes both mediation and litigation using criteria developed in the field of complex adaptive systems. Author comes to the conclusion that mediation is superior to litigation in capturing the qualities of a complex adaptive system. Author further posits that viewing dispute resolution in this light, mediation should be the primary means of settling disputes while litigation should be the alternate process.
{21} MED: RELATED PROCESSES-GENERAL

Ryan, Michelle. "Alternative Dispute Resolution in Environmental Cases: Friend or Foe?" Tulane Environmental Law Journal; Summer, 1997; 10(2): pp. 397-414.
This articles provides a concise overview of what environmental alternative dispute resolution entails and what its proper role should be. The author traces the roots of environmental ADR in the United States by focusing on two case studies and the results of early attempts at environmental mediation. The author discusses the current state of ADR in resolving environmental disputes by examining two recent environmental mediations. The author contends that citizen groups should approach environmental ADR with great caution.
{84} SUBJ MATTER: ENVIRONMENT

Salman, Robert R. and Suzanne A. Salman. "Points to Ponder for Arbitration Agreements." The Practical Lawyer; January, 1997; 43(1): pp. 31-38.
Article provides some practical guidelines to the drafters of arbitration clauses to help control the length, nature and cost of arbitrations. The authors address the need for establishing time limits, controlling discovery, selecting a panel and avoiding evidentiary problems. The authors emphasize the need for drafting clear and concise arbitration clauses that address the specific needs of the parties.
{74} SUBJ MATTER: GENERAL
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Schleyer, Glen T. "Power to the People: Allowing Private Parties to Raise Claims Before the WTO Dispute Resolution System." Fordham Law Review; April, 1997; 65(5): pp. 2275-2311.
Article examines the dispute resolution systems of GATT and the WTO to find that a rule-oriented rather than a power-oriented approach to dispute resolution is the trend in international dispute resolution. Author is encouraged by this trend toward rule-based dispute resolution, which he argues could be further enhanced by greater private participation in the WTO. Toward this end, the author examines, and ultimately rejects, mechanisms other than standing to increase private participation, and advocates the creation of a commission within the WTO that would evaluate, organize and process private-party complaints.
{92} SUBJ MATTER: INT'L

Schmitz, Suzanne J. " Using ADR for Your Client: An Illinois Lawyer's Guide." Illinois Bar Journal; February, 1997; 85: pp. 64-69.
Article provides lawyers with tips on when to use ADR and how to implement it. The author outlines different methods of ADR, highlights important factors to consider when drafting ADR clauses and agreements and discusses when to initiate ADR and how to approach the other party. The author feels that the use of ADR will increase a lawyer's practice, not reduce it.
{74} SUBJ MATTER: GENERAL
{136} ECONOMIC ADVANTAGES OF ADR

Shaw, Danny G. "Tips From the Litigator: Mediation Advocacy." Louisiana Bar Journal; August, 1997; 45(2): pp. 140-145.
Author proposes a list of techniques that may help lawyers to obtain satisfactory mediation for their clients. These include: selecting a knowledgeable mediator, appropriately structuring the mediation, preparing the client, being a non-adversarial advocate and remaining flexible. Author contends that these ingredients, along with the correct effort and attitude, can facilitate successful mediation for the client.
{21} MED: RELATED PROCESSES-GENERAL

Shemberg, Andrea. "Mediation As an Alternative Method of Dispute Resolution for the Individuals with Disabilities Education Act: A Just Proposal?" The Ohio State Journal on Dispute Resolution; Spring 1997; 12(3): pp. 739-757.
Article discusses a proposed amendment to the Individuals with Disabilities

Education Act. The amendment would mandate mediation of claims of alleged violations of the IDEA before the parties could proceed to court. Author contends that the amendment will create more obstacles for resolving grievances and inequitable settlements.
{144} LEGISLATION

Sherman, Edward F. "Confidentiality in ADR Proceeding: Policy Issues Arising from the Texas Experience." South Texas Law Review; May, 1997; 38(2): pp. 541-573.
Article explores the issue of reconciling Texas' ADR confidentiality rules with Texas's "public access" standards. Article provides an overview of Texas' broad ADR confidentiality rule. Author concludes that Texas courts need be sensitive to the conflicting interests between the ADR rules and "public access" standards.
{132} CONFIDENTIALITY

Siegal, Jay S. "Changing Public Policy: Private Arbitration to Resolve Statutory Employment Disputes." The Labor Lawyer; Summer, 1997; 13(1): pp. 87-106.
Article discusses the push for greater use of ADR in resolving employment related disputes and whether ADR can adequately address these disputes. Author contends that this is a necessary public policy change to address an overloaded court system.
{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

Snow, Carlton J. "Building Trust in the Workplace." Hofstra Labor Law Journal; Spring, 1997; 14(2): pp. 465-525.
Article discusses the role that trust between parties plays in collective bargaining between labor and management. Although traditionally collective bargaining and trust formation have been thought of as incompatible, author suggests careful examination by negotiators of relationship dynamics could result in formation of more positive and economically beneficial relationships with long- term positive effects, including better workplace relations between supervisors and workers.
{95} SUBJ MATTER: LABOR-MANAGEMENT (UNIONS)

Soled, Jay A. "Transfer Tax Valuation Issues, the Game Theory, and Final Offer Arbitration: A Modest Proposal for Reform." Arizona Law Review; Spring, 1997; 39(1): pp. 283-310.
Article attempts to solve the problem created in the tax valuation of closely

held businesses. Using "game theory analysis", the author recognizes the problems created by the clash between the IRS and the taxpayer during the valuation process. The author proposes final offer arbitration as a solution to these problems and as a way to reduce costly litigation.
{108} SUBJ MATTER: TAX

Spelfogel, Evan J. "In Support of Mandatory Arbitration of Statutory Employment Disputes." Journal of Collective Negotiations in the Public Sector; Summer, 1997; 26(3): pp. 247-253.
The article discusses benefits and criticisms of forced arbitration in employment disputes. The article discusses recent case law on forced arbitration. The author concludes that while there are some drawbacks to forced arbitration, generally, the positive aspects outweigh the negative. The author encourages employers to use arbitration agreements with employees.
{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL
{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

Spencer, David. "Farm Debt Mediation Act." Law Society Journal (New South Wales); August, 1997; 35: pp. 52-55.
Author discusses how two recent developments regarding the Farm Debt Mediation Act 1995 (New South Wales, Australia) assist solicitors in statutory interpretation regarding the legislation. Author first explains the ramifications of the decision of the Supreme Court of New South Wales in *Varga v. Commonwealth Bank of Australia* (1997) NSW ConvR 55-797, where the court clarified the definition of "farmer" and "farm debt." Author then explains the consequences of the passing of the Farm Debt Mediation Amendment Act of 1996.
{86} SUBJ MATTER: FARM
{92} SUBJ MATTER: INT'L

Sperling, G. Hans. "New London Arbitration Rules: Paradise Regained?" Tulane Maritime Law Review; Summer, 1997; 21(2): pp. 557-591.
Author illustrates the changed nature of maritime arbitration, from a quick and informal process of dispute resolution to one that is too slow, expensive and complicated. It is the London Maritime Arbitrator's Association (LMAA) that has responded to this problem, the author writes. It is concluded that the LLMA's new rules will, at the very least, endeavor to alleviate the problems of speed and cost, but that their success depends on the parties, lawyers and arbitrators that apply them.

{97} SUBJ MATTER: MARITIME

Stabile, Mark E. "The Effect of the Federally Imposed Mediation Requirement of the Indiana Gaming Regulatory Act on the Tribal-State Compacting Process." Seton Hall Journal of Sport Law; Spring, 1997; 18(2): pp. 281-287.
Article examines the Indian Gaming Regulatory Act, focusing particular attention on the process of Tri-State compacting. Author criticizes the current IGRA mediation and negotiation provisions for their failure to require adequate facilitation by the mediator and participation by the state. Author argues that Congress should amend these provisions to better define the role of the mediator and encourage voluntary participation by the state.
{107} SUBJ MATTER: SPORTS AND ENTERTAINMENT
{127} REQUIREMENTS: MANDATE TO USE

Stark, James H. "The Ethics of Mediation evaluation: Some Troublesome Questions and Tentative Proposals, from an evaluative Lawyer Mediator (Symposium: The Lawyer's Duties and Responsibilities in Dispute Resolution)." South Texas Law Review; May, 1997; 38(2): pp. 769-799.
Article questions under what circumstances and how case evaluation in mediation should be used. Article provides overview of arguments for and against case evaluation in mediation. Author posits that if a mediator decides to evaluate, the mediator ought to provide the parties with information sufficient to allow parties to make informed decisions.
{21} MED: RELATED PROCESSES-GENERAL

Starr, Linda J. "Injured on the Job: Using Alternative Dispute Resolution to Improve Worker's Compensation in Minnesota." Hamline Journal of Public Law and Policy; Spring, 1997; 18(2): pp. 487-520.
Article addresses alternatives to the formal hearing process used to settle disputes arising under the Minnesota Worker's Compensation Act. Author discusses the benefits and concerns that arise when these disputes are settled outside the traditional hearing forum. Author contends that voluntary use of arbitration would be an improvement over the current system requiring the use of arbitration
{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL
{91} SUBJ MATTER: INSURANCE
{93} SUBJ MATTER: LABOR-GENERAL

Stempel, Jeffrey W. "Beyond Formalism and False Dichotomies: the Need for Institutionalizing a Flexible Concept of the Mediator's Role." Florida State University Law Review; Summer, 1997; 24(4): pp. 949-984.
The author defends the evaluative aspects of mediation and questions the notion that "good" mediation must fit the facilitative model. His primary focus is not to advocate evaluative mediation but rather to endorse flexible mediation that permits judicious use of evaluative techniques. Author advocates a case-by-case determination of disputes and endorses flexible mediation.
{21} MED: RELATED PROCESSES-GENERAL

Stimson, Judith. "A New Television Series in the Making: DATELINE ADR." Res Gestae; March, 1997; 40(9): pp. 22-24.
Article announcing new television series to air in Indiana to educate potential consumers of ADR. Series, which was produced by the Indiana Bar Association, is entitled "Dateline ADR" and includes programs on various ADR topics, such as family mediation, community dispute resolution, special education and environmental dispute resolution.
{105} SUBJ MATTER: SCEINCE, COMPUTERS & TECHNOLOGY

Strong, Elizabeth. "A User's Guide to Alternative Dispute Resolution in Business Cases." The Practical Lawyer; June, 1997; 43(4): pp. 15-26.
The article deals with ADR in the business context, focusing on the goals rather than the process. The article discusses the characteristics of a good neutral, as well as ways in which ADR can be made to work for those who are reluctant to pursue it in the business context.
{81} SUBJ MATTER: CORPORATE

Stulberg, Joseph B. "Facilitative versus evaluative mediator orientations: piercing the 'grid' lock." Florida State University Law Review; Summer, 1997; 24(4): pp. 985-1005.
This Article provides a concise overview of two styles of mediation: facilitative and evaluative. The author believes that certain criticisms and methods of separating "styles" of mediation distort techniques, strategies and theories that are distinctive of the mediator's role. The author believes that this prevents people from acting in a certain way and that it distorts goals.
{21} MED: RELATED PROCESSES-GENERAL

Syverud, Kent D. "Symposium on Alternative Dispute Resolution: ADR and the Decline of the American Civil Jury." UCLA Law Review; August, 1997; 44(6): pp. 1631-1659.
Article argues that alternative dispute resolution methods are a cause of the decline of the American civil jury trial, although not the proximate cause. Instead, the author proposes, the defects of the civil jury trial itself and society's failure to address those defects are the true proximate cause of the civil jury's decline.
{133} COURT REFORM

Taylor, David. "Rising Defense Costs: What's the Alternative?" Law Society Journal; June 1997; 35(5): pp. 40.
This article is a general introduction to ADR. The author presents the different types of ADR his organization uses: negotiation, issue and settlement conferences, mediation, conciliation and independent experts. The article encourages use of ADR.
{74} SUBJ MATTER: GENERAL
{136} ECONOMIC ADVANTAGES OF ADR

Taylor, Jim. "On Keeping an Open Mind About Dispute Resolution." The Advocate; July, 1997; 55(4): pp. 515-520.
The author describes dispute resolution techniques that he encountered over the course of a year. He discusses four different cases and the manner in which they were resolved. He concludes by pointing out the value in breaking from tradition when resolving disputes.
{74} SUBJ MATTER: GENERA:L

Thompson, Peter N. "Confidentiality, Competency and Confusion: the uncertain promise of the mediation privilege in Minnesota." Hamline Journal of Public Law and Policy; Spring, 1997; 18(2): pp. 329-375.
Article provides an overview of the sometimes conflicting statutes and court decisions dealing with confidentiality in mediations. The author concludes that the many conflicting statutes and court decisions leave neutrals and parties using the mediation process uncertain of the scope of the "promised" confidentiality of the mediation. Finally, the author proposes comprehensive legislation to reconcile and provide clarity to the rules of confidentiality in mediation.
{132} CONFIDENTIALITY

Todd, Paul. "Incorporation of Arbitration Clauses into Bills of Lading." Journal of Business Law (U.K); July, 1997: pp. 331-349.
The author argues that the wording of an arbitration clause from a charterparty should be irrelevant in determining whether the clause is incorporated into a bill of lading. The author further argues that arbitration clauses should be treated differently from other clauses in a charterparty because of special characteristics.
{76} SUBJ MATTER: COMMERCIAL
{92} SUBJ MATTER: INT'L

Tsosie, Rebecca. "Negotiating Economic Survival: The Consent Principle and Tribal-State Compacts Under the Indian Gaming Regulatory Act." Arizona State Law Journal; Spring, 1997; 29(1): pp. 25-96.
Article discusses the model of negotiated tribal-state compacts in the context of the Indian Gaming Regulatory Act (IGRA) as an application of the consent principle--the idea of a political negotiating arena between tribes, state and federal governments. Author contends that IGRA, which elevates state interests to the level of legal rights, has undermined Indian sovereignty and that tribal rights may be better enforced through litigation than negotiation.
{1} NEG: W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL-GENERAL
{74} SUBJ MATTER: GENERAL
{107} SPORTS AND ENTERTAINMENT

Turpin, Richard A. "Factors Considered by Public Sector Interest Arbitrators in Assessing Ability to Pay." Journal of Collective Negotiations in the Public Sector; Winter, 1997; 26(1): pp. 1-7.
Article contains conclusions drawn from a study which attempts to identify factors that public sector interest abritrators consider in assessing an employer's ability to pay. Author states that ability to pay criterion is one of three major criteria that arbitrators consider in public sector wages cases. Author notes that there is a lack of agreement as to which factors to consider when looking at an employer's ability to pay, and concludes that a set of specific factors to be considered should be established.
{93) SUBJ MATTER: LABOR-GENERAL
{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

Van Houtte, Hans. "Trade Sanctions and Arbitration." International Business Lawyer; April, 1997; 25(4): pp. 166-171.
Article provides an overview of the use and impact of sanctions on

international business arbitration. Author concludes that arbitrators must review and take into account state policies and economic sanctions when judging commercial relations between companies.
{92} SUBJ MATTER: INT'L

Van Wezel Stone, Katherine. "Mandatory Arbitration of Individual Employment Rights: The Yellow Dog Contract of the 1990's." Denver University Law Review; 73(4): pp. 1017-1050.
Article describes the trend toward mandatory arbitration of statutory employment rights. Author contends that the trend threatens to deprive workers of their statutory rights altogether. Article demonstrates that mandatory arbitration is often imposed as a condition of employment, without any consent or bargaining. Thus, mandatory arbitration agreements operate as the new yellow dog contracts of the 1990s. Author argues that courts should not permit workers to waive their rights under state or federal employment statutes. Author concludes that to do otherwise threatens to nullify the past sixty years' development of workers' rights and will make it difficult to legislate effective worker protection in the future.
{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

Waks, J.W. and John Roberti. "Challenges to Employment ADR: Processes, Rather than Principles, are at Issue." Journal of Collective Negotiations in the Public Sector; Winter 1997; 26(1): pp. 85-96.
Article discusses the movement of employment ADR from objecting to the principle of employment arbitration to raising point-by point challenges to individual aspects of the process. Article concludes that employers must carefully craft policies, make clear their scope and effect and guarantee that the processes they design are as fair as court process to be sure that mandatory predispute arbitration will be upheld.
{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

Wang, Guiguo. "One Country, Two Arbitration Systems." Journal of International Arbitration; March, 1997; 14(1): pp. 5-42.
Article examines the recognition and enforcement of arbitral awards in Hong Kong and China. Author provides a comparative study of China's civil-law system and Hong Kong's common-law system with respect to arbitration. Author concludes that China has made remarkable achievements in enforcing arbitral awards rendered in Hong Kong, and that such enforcement will continue smoothly.
{92} SUBJ MATTER: INT'L

Wanis St. John, Anthony. "The Mediating Role in the Kashmir Dispute Between India and Pakistan." Fletcher Forum of World Affairs; Winter/Spring, 1997; 21(1): pp. 173-195.
This article examines the possibility that the U.S. government mediate the conflict between India and Pakistan over Kashmir, which is considered by Pakistan and the United Nations to be a disputed territory whose fate has never been definitively resolved. Specifically, it evaluates whether, and to what extent, certain circumstances and relationships that permitted and prolonged the stalemate have changed to increase the prospects for a U.S.-mediated de-escalation process.
{92} SUBJ MATTER: INT'L

Warmbrod, Monica L. "Could an Attorney Face Disciplinary Actions or Even Legal Malpractice Liability for Failure to Inform Clients of Alternative Dispute Resolution?" Cumberland Law Review; Winter, 1997; 27(2): pp. 791-819.
This article provides a concise overview of the present forms of alternative dispute resolution mechanisms and the importance of advising clients of these mechanisms. The author explores the history, philosophy and forms of alternative dispute resolution. The author contends that the critics of ADR may have underestimated its benefits. Finally, the author discusses an attorney's responsibility to appraise their clients of ADR options and an attorney's potential liability to disciplinary action or legal malpractice for failure to do so.
{99} SUBJ MATTER: OTHER PROF MALPRACTICE
{138} ETHICS: GENERAL

Wauk, Alison C. "Preliminary Injuncions in Arbitration Disputes: The Case for Limited Court Jurisdiction." UCLA Law Review; August, 1997; 44(6): pp. 2061-2087.
This Comment addresses the issue of whether, and to what extent, a court has jurisdiction over an underlying dispute that has been submitted to an arbitrator. Because the Federal Arbitration Act does not directly address this issue, the federal circuits are and the U.S. Supreme Court has denied certiorari thus far, this author proposes that a court's jurisdiction over an arbitrable dispute should be limited to two specific situations. First, the jurisdiction should be limited to cases in which the parties have included a contract clause providing for an injunction pending the resolution of the dispute. In addition, the jurisdiction should be limited to cases where the

delay pending an arbitrator's decision on an issue of interim relief will cause incompensable harm.
{133} COURT REFORM

Weiner, Talia. "Arbitration (D.C. Circuit Review: September 1995-August 1996." George Washington Law Review; April 1997; 65(4/5): pp. 616-621 .
Author reviews the D.C. Circuit Court decision in *Al-Harbi v. Citibank N.A.*, 85 F.3d 680 (D.C. Cir., *cert. denied*, 117 S. Ct. 432 (1996)), which held that arbitrator's have no duty to investigate unknown connections to parties. After discussing the factual and procedural background, author explores the legal backdrop including the duty to disclose doctrine and a court's power to vacate an arbitration award. Author then discusses the Court's resolution of the issues including evident partiality and manifest disregard of the law. Author concludes that *Al-Harbi* makes it clear that a party seeking to vacate an arbitration award on the ground of "evident partiality" and "manifest disregard of the law" bears a heavy burden of proof given that an arbitrator does not have an affirmative duty to investigate and disclose unknown connections to the parties.
{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

Weissman, Gary A. "A lawyer's view of the family law amendments to Rule 114." Hamline Journal of Public Law and Policy; Spring, 1997; 18(2): pp. 394-412.
Article provides an overview of Rule 114, the Minnesota Supreme Court rule empowering judges to initiate mandatory ADR processes in the district courts, and the 1997 family law amendment thereto. The article discusses the rule in a simulated dialogue among several lawyer and non-lawyer friends and provides a good exchange which develops both sides of the argument over the family law amendment to Rule 114.
{85} SUBJ MATTER: FAMILY (DOMESTIC REL)
{127} REQUIREMENTS: MANDATE TO USE

Werner, Jacques. "The Independence of Arbitrators in Totalitarian States." Journal of International Arbitration; March, 1997; 14(1): pp. 141-144.
Article discusses the independence of party-appointed arbitrators from totalitarian states. Author contends that the objectivity of such arbitrators is compromised by compelled obedience to the party. Author recommends that the ICC Court of International Arbitration refuse to confirm party-

appointed arbitrators.
{92} SUBJ MATTER: INT'L

White, Elmer E. "Rule 2.403 Mediation: Toward a More rational Process." Michigan Bar Journal; February 1997; 76(2): pp. 172-175.
Author criticizes MCR 2.403, which imposes sanctions on a plaintiff who rejects court appointed mediation and fails to obtain a larger award than the mediation evaluation, as being too harsh. The article acknowledges that MCR 2.403 leads to increased use of mediation, but points to injustices created by the rule including the sanctions and mandatory award of attorney fees to the victorious party. The author suggests out of court mediation involving blue ribbon mediators and mini-trials as a solution.
{21} MED: RELATED PROCESSES-GENERAL
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

Wittenberg, Carol A., Susan T. Mackenzie, et al. "ADR Flexibility in Employment Disputes." Journal of Collective Negotiations in the Public Sector; Spring, 1997; 26(2): pp. 155-160.
Article discusses the increased use of ADR to resolve employment disputes. Authors examine the procedures of combining fact-finding investigations with mediation, combining fact-finding with facilitation, and combining mediation with advisory settlement. Authors conclude that it is helpful for attorneys to look at ADR as a flexible system for employment disputes, and work with the neutral to create procedures best suited to the circumstances of each case.
{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

Wolfe, Jeffery S. "The Hidden Parameter: Spatial Dynamics and Alternative Dispute Resolution." Ohio State Journal on Dispute Resolution; Spring, 1997; 12(3): pp. 685-738.
Article examines the impact of spatial dynamics on the success of settlement discussions, paying particular attention to the size of the room and location of the parties. Author argues that lawyers and other practitioners must be aware of these macro and micro dynamics to affect better settlement discussions.
{123} SETTLEMENT: PRESSURES TO SETTLE

Woo, Kwang-Taeck. "A Comparison of Court-Connected Mediation in Florida and Korea." Brooklyn Journal of International Law; January, 1997;

22: pp. 605-636.
Author states the differences between mediation in Korea and Florida by focusing on the length of time mediation has been used by each jurisdiction and whether or not the mediation is connected to the court system. The Article provides critical analysis of both mediation systems and suggests ways to improve both systems.
{92} SUBJ MATTER: INT'L
{124} COMPARISONS: CROSS-CULTURAL

Woodley, Ann E. "Strengthening the Summary Jury Trial: A Proposal to Increase Its Effectiveness and Encourage Uniformity In Its Use." Ohio State Journal on Dispute Resolution; Spring, 1997; 12(3): pp. 541-620.
Article, the second of a two-part series "designed to first save, and then strengthen" the summary jury trial, provides an in-depth look at this processes and its uses. Author advocates for the adoption of a model law governing its use and proposes a model local rule to begin the debate.
{133} COURT REFORM

Wynn-Evans, Charles. "Implication and Omission in Collectively Negotiated Contracts." Industrial Law Journal (UK); June 1997; 26(2): pp. 166-168.
This article reviews the recent case of *Ali v. Christian Salvesen Food Services Limited,* (1997) IRLR 17; (1997) ICR 25 (CA). The Court of Appeals overturned the EAT's decision and held that it is improper to imply a term which the agreement does not expressly address.
{95} SUBJ MATTER: LABOR-MANAGEMENT (UNIONS)

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Mann, Kimberly J.
Mettera, Richard J.
Morrisson, Scott S.
Newman, Lawrence W.
Nicolau, George
Page, Reba
Ponder, Patricia J.
Reuben, Richard C.
Roumell, George T. Jr.
Rovine, Arthur W.
Spelfogel, Evan J.
Starr, Linda J.
Weiner, Talia

{74} SUBJ MATTER: GENERAL
Ayres, Ian
Diamond, Thomas A.

Dunham, Edward Wood
Fried, Gil and Michael Hiller
Golberg, Steven H.
Guill, Terenia Urban
Himelspach, Daniel C.
Joseph, Cassondra E.
Mains, Steve A.
Salman, Robert R.
Schmitz, Suzanne J.
Taylor, David
Tsosie, Rebecca

{75} SUBJ MATTER: ANTITRUST
Fulsang, Eric James.

{76} SUBJ MATTER: COMMERCIAL
Davitz, Christine L.
Gotanda, John Y.
Maria, Diana Santa
Todd, Paul

{78} SUBJ MATTER: COMMUNITY
Freshman, Clark

{80} SUBJ MATTER: CONSTRUCTION
Franks, J. Michael
Hinchey, John W.
Lesser, Stephen B.

{81} SUBJ MATTER: CORPORATE
McLaughlin, Peter F.
Strong, Elizabeth

{83} SUBJ MATTER: EDUCATION
Luthar, Harsh K.

{84} SUBJ MATTER: ENVIRONMENT
Harrison, John
Mehta, Aseem.
Ryan, Michelle

{85} SUBJ MATTER: FAMILY (DOMESTIC REL)
Bridge, Caroline
Davidson, Mary
Freshman, Clark
Gangel-Jacobs, Phyllis
Gary, Susan N.
Giovannucci, Marilou T.
Harges, Bobby Marzine
Hauer, Harvey I.
Hoenig, James K.
Jensen, Rita Henley
Kandel, Randy Frances
Mosten, Forrest S.
Richards, Christopher
Weissman, Gary A.

{86} SUBJ MATTER: FARM
Spencer, David

{87} SUBJ MATTER: GOV'T
Plapinger, Elizabeth

{89} SUBJ MATTER: HOSPITALS
Goren, William D.
Lehrburger, LIllian S.

{91} SUBJ MATTER: INSURANCE
Binning, John H.
Pickens, Andrew L.
Regan, Richard R.
Starr, Linda J.

{92} SUBJ MATTER: INT'L
Albren, Brett A.
Banforth, Richard
Beresford, Hartwell, Geoffrey M.
Blackford, Jason C.
Bridge, Caroline
Cassidy, Robert

Davidson, Fraser
Davitz, Christine L.
Donahey, M. Scott
Fishburne, Benjamin P. III
Freese Jr., L., et al.
Garcia, Frank J.
Gotanda, John Y.
Harrington, Michael E.
Holtzmann, Howard M.
Hunter, Rosemary
Igbokwe, Virtus C.
Jesse Jr., Franklin C.
Jordaan, Jasmine
Keene, Brian
McLaughlin, Peter F.
Maria, Diana Santa
Martha, Rutsel Silvestre J.
Nafziger, James A. R.
Nariman, Fali S.
Newman, Lawrence W.
Pardieck, Andrew W.
Park, William W.
Picker, Sydney
Potter, Simon
Purcell, Heather A.
Rogers, Andrew
Rogers, John R.
Rossdale, Philip
Rovine, Arthur W.
Schleyer, Glen T.
Spencer, David
Todd, Paul
Van Houtte, Hans
Wang, Guiguo.
Wanis St. John, Anthony
Werner, Jacques.
Woo, Kwang-Taeck

{93} SUBJ MATTER: LABOR-GENERAL
Black-Branch, Jonathan L.

Cole, Sarah Rudolph
Delikat, Michael
Devinatz, Victor G.
Dibble, Richard E.
Finkin, Matthew W.
Heinsz, Timothy J.
Knibb, Shaunta M.
McGlothen, Condon A.
Starr, Linda J.
Turpin, Richard A.

{94} SUBJ MATTER: LABOR-DISCRIMINATION
Hunter, Rosemary
Marczely, Bernadette
McGlothen, Condon A.

{95} SUBJ MATTER: LABOR-MANAGEMENT (UNIONS)
Cook, John E.
Haber, Lawrence J.
Nicolau, George
Powers, James J.
Snow, Carlton J.
Wynn-Evans, Charles

{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)
Bompey, Stuart H.
Bond, Carrie
Hansen, Mark
Icenogle, Marjorie L.
Jacob, Anthony J.
Nicolau, George
Siegal, Jay S.
Spelfogel, Evan J.
Turpin, Richard A.
Van Wezel Stone, Katherine
Waks, J.W.
Wittenberg, Carol A.

{97} SUBJ MATTER: MARITIME
Lee, Soo Sandra Jin

Milhorn, Brandon L.
Sperling, G. Hans

{98} SUBJ MATTER: MEDICAL MALPRACTICE
Carter, Patricia I.
Pears, Ian

{99} SUBJ MATTER: OTHER PROF MALPRACTICE
Arnold, Tom
McMonigle, Joseph P.
Powers, Jean Fleming
Warmbrod, Monica L.

{102} SUBJ MATTER: PUBLIC POLICY
Beresford Hartwell, Geoffrey M.
Davis, Kenneth R.

{103} SUBJ MATTER: PUBLIC UTILITIES
Myers, Edward B.

{104} SUBJ MATTER: REGULATORY
Hayes, Christopher G. and Robb, William.

{105} SUBJ MATTER: SCEINCE, COMPUTERS & TECHNOLOGY
Blackwell, Gerry
Ellman, Stephen J.
Friedman, George H.
Gellman, Robert
Martell, Patrick J.
Paradise, Gregg A.
Stimson, Judith

{106} SUBJ MATTER: SECURITIES
Coakley, Michael P.
Figman, Cory S.
Kassoris, Constantine N.
Minnick, David M.
Rogers, John R.

{107} SUBJ MATTER: SPORTS AND ENTERTAINMENT
Kovach, Kenneth A.
Stabile, Mark E.
Tsosie, Rebecca

{108} SUBJ MATTER: TAX
Soled, Jay A.

{110} SUBJ MATTER: OTHER TORTS
Bond, Carrie
Carrington, Paul D.
Gellman, Robert
Gregoire, Christine
McGovern, Francis E.

{114} 3D PARTY: PRACTICE OF LAW
Grezlak, Hank

{121} SETTLEMENT: AUTHORITY
Gregoire, Christine

{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD
Billings, Peter W.
Fox, Mary Ellen
McCabe, Michael A.
Nicalau, George
Regan, Richard R.
White, Elmer E.

{123} SETTLEMENT: PRESSURES TO SETTLE
Green, Eric D.
Wolfe, Jeffery S.

{124} COMPARISONS: CROSS-CULTURAL
Cook, John E.
Woo, Kwang-Taeck

{125} COMPARISONS: HISTORICAL
Kendall, John

Knibb, Shaunta M.
Reuben, Richard C.

{126} REQUIREMENTS: CONTRACTUAL CLAUSES
Diamond, Thomas A.
Salman, Robert R.

{127} REQUIREMENTS: MANDATE TO USE
Hansen, Mark
Harper, Barbara
McAdoo, Barbara
Stabile, Mark E.
Weissman, Gary A.

{128} REQUIREMENTS: STATUTORY OR RULES
Harper, Barbara
Plapinger, Elizabeth
Roumell, George T., Jr.

{132} CONFIDENTIALITY
Kentra, Pamela A
Mehta, Aseem
Needham, Carol A.
Rogers, Andrew
Sherman, Edward F.
Thompson, Peter N.

{133} COURT REFORM
Fowler, William G. II
Gotanda, John Y.
Jacob, Anthony J.
Lambros, Thomas D.
Page, Reba
Paradise, Gregg A
Plapinger, Elizabeth.
Syverud, Kent D.
Wauk, Alison C.
Woodley, Ann E.

{136} ECONOMIC ADVANTAGES OF ADR
Aemmer, David
Bush, Robert A. Baruch
Gary, Susan N.
Guill, Terenia Urban

Maria, Diana Santa
McMonigle, Joseph P.
Schmitz, Suzanne J.
Taylor, David

{138} ETHICS: GENERAL
Alternative Dispute Resolution Board
Barrett, John Q.
Craver, Charles B.
Feerick, John D.
Grezlak, Hank
Kentra, Pamela A.
Kovach, Kimberlee K.
Krohnke, Duane W.
Love, Lela Porter
Menkel-Meadow, Carrie.
Moberly, Robert B.
Powers, Jean Fleming
Rau, Allan Scott.
Warmbrod, Monica L.

{139} ETHICS: MISREPRESENTATION, FAILURE TO DISCLOSE
Garwin, Arthur

{144} LEGISLATION
Murr, George G.
Shemberg, Andrea

{145} OMBUDSPERSON
Dibble, Richard E.
McGrath, Andrea

{146} ORGANIZATION POLICIES AND RULES
Aarons, Anthony

Davitz, Christine L.
Martha, Rutsel Silvestre J.
Ortner, Sally K. and Merrill Shields

{149} QUALITY CONTROL
Davidson, mary
Harges, Bobby Marzine
Menkel-Meadow, Carrie
Ortner, Sally K.

{151} ROLE OF LAWYERS
Chanen, Jill Schachner
Connor, Laurence D.
Hay, Bruce L.
Hricik, David
Jacobs, Kenneth L.
McAdoo, Barbara
Needham, Carol A.